

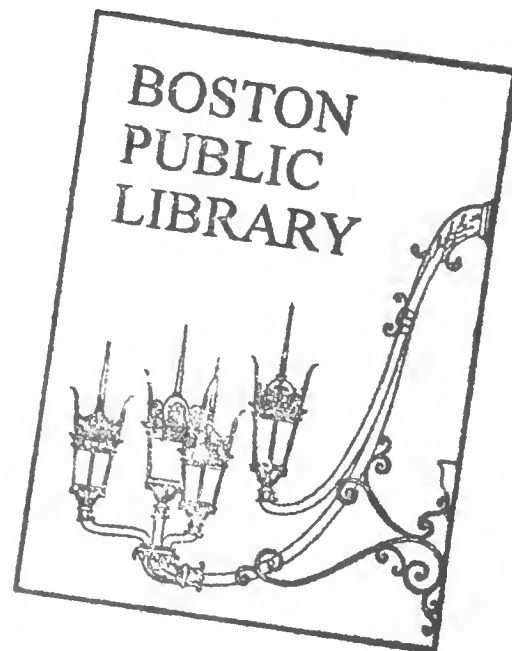
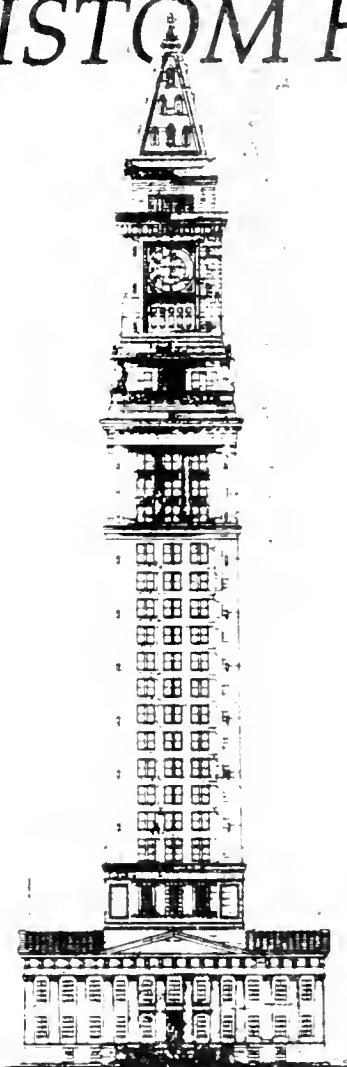
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U.S. CUSTOM HOUSE



BOSTON REDEVELOPMENT AUTHORITY

BOARD OF DIRECTORS MEETING

OF SEPTEMBER 21, 1989

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Co-Vice Chairman

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Member

KANE SIMONIAN
Secretary

STEPHEN COYLE
Director

MEMORANDUM

To: BRA Board Members
From: Stephen Coyle, Director
Date: 9/19/89
Subject: Technopolis Forum

On Friday, September 22, 1989, the Boston Redevelopment Authority will conduct a forum on the subject of "Technopolis Development in Boston." The forum will feature presentations by two experts in the field of "research park development" from New Haven, Connecticut and Philadelphia, Pennsylvania, as well as a third expert in "air rights development" from Philadelphia. The purpose of the forum is to provide the BRA with expertise and insights into the planning and development of the South Station Technopolis site as well as other potential research sites in Boston.

AGENDA

9:30-10:00 a.m.	Introductions and an overview of Boston's Technopolis initiative (BRA Board Room)
10:00-12:00 Noon	Development presentations
12:00-1:00 p.m.	Brief tour of South Station and the Charlestown Navy Yard
1:00-2:30 p.m.	Working luncheon (City Hall)
2:30-4:00 p.m.	Follow-up discussions (City Hall)

BOSTON REDEVELOPMENT
AUTHORITY
DiCARA, SELIG, SAWYER & HOLT
20 CUSTOM HOUSE STREET
BOSTON, MASSACHUSETTS 02110

SEP 22 4 13 PM '89

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2000 K STREET SUITE 500
WASHINGTON D.C. 20006
(202) 466-3335

September 22, 1989

HAND DELIVERY

Mr. Kane Simonian
Executive Secretary
Boston Redevelopment Authority
9th Floor
Boston City Hall
Boston, MA 02201

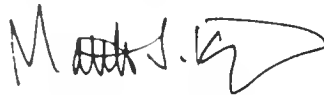
Re: Article 31A

Dear Mr. Simonian:

I am transmitting comments on Article 31A of the Boston Zoning Code, which was considered by the BRA board at its meeting last Thursday, September 14th, on behalf of a lawyer's ad hoc zoning committee convened to review this proposed amendment. We are in the process of reviewing these comments with members of the BRA staff and are hopeful that many of our requested changes will be incorporated into a revised draft prior to final BRA Board approval.

Very truly yours,

DICARA, SELIG, SAWYER & HOLT



Matthew J. Kiefer

MJK/abv
999904
cc: Ted Chandler
Participating Lawyers

PARTICIPATING LAWYERS

Gaston & Snow
One Federal Street
Boston, Massachusetts 02110
426-4600
Contact Lawyer: John A. Kessler, Jr., Esq.
Kenneth B. Gould, Esq.

McCormack & Putziger
265 Franklin Street
Boston, Massachusetts 02110
439-4100
Contact Lawyer: Myrna Putziger, Attorney

Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110
482-1776
Contact Lawyer: Steven R. Astrove, Esq.

Hale & Dorr
60 State Street
Boston, Massachusetts 02109
742-9100
Contact Lawyer: Herbert W. Vaughan, Esq.
Melvin R. Shuman, Esq.

Ropes & Gray
1 International Place
Boston, Massachusetts 02110
951-7000
Contact Lawyer: Stephen P. Lindsay, Esq.

Goodwin, Procter & Hoar
Exchange Place
Boston, Massachusetts 02109
570-1000
Contact Lawyer: David P. Ries, Esq.
Mary T. Feeney, Esq.

DiCara, Selig, Sawyer & Holt
20 Custom House Street
Boston, Massachusetts 02110
330-5000

Contact Lawyer: Lawrence S. DiCara, Esq.
Matthew J. Kiefer, Esquire

TO THE ZONING COMMISSION OF THE CITY OF BOSTON:

The Boston Redevelopment Authority petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956 as amended, as follows.

By Inserting after Article 31 the following article:

**ARTICLE 31A
DISCLOSURE OF BENEFICIAL INTERESTS**

SECTION 31A-1. Statement of Purpose. This Article establishes a process for the full disclosure of beneficial interests in large-scale development projects which require zoning relief. The purposes of such disclosure include without limitation the following: to inform public decision-makers and the public-at-large of the identity and extent of the interest held by all persons having any beneficial interest in property which is subject to public review and approval by the Boston Redevelopment Authority, the Zoning Commission, or the Board of Appeal, and thereby improve municipal land use decisions and foster public understanding and trust in the process of such review and approval; and to provide a process under which officials making land use decisions can identify and avoid conflicts of interest.

SECTION 31A-2. Definitions. For the purposes of this article only, the following words and phrases have the meanings indicated:

1. "Applicant" means any Person ^{or Persons} having a ~~legal or equitable~~ ^{Beneficial} interest in a Proposed Project subject to the provisions of this article or the authorized agent of any such Person.

2. "Beneficial Interest" means any legal or equitable direct or indirect ownership interest, whether as an individual or through a partnership, corporation, trust, or other legal entity, or otherwise, ~~or any actual or potential profit, benefit, or advantage resulting from any such ownership interest,~~ or a contractual right to any such ownership interest, whether or not contingent.
3. "Disclosure Statement" means the statement required by Section 31A-4 of this article.
4. "Person" means an individual, partnership, corporation, trust, and other legal entity.
5. "Proposed Project" means the erection or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit.
6. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

SECTION 31A-3. Applicability. This article applies to any Proposed Project which requires Zoning Relief and which falls into any of the following categories:
(a) construction of a building or structure having a gross floor area of one hundred thousand (100,000) or more square feet; (b) enlargement or construction

of a building or structure so as to increase its gross floor area by one hundred thousand (100,000) or more square feet; or (c) establishment or change of the uses of gross floor area of one hundred thousand (100,000) or more square feet.

However, any ^{the following} Proposed Projects ~~for which Zoning Relief has been granted by the Board of Appeal prior to the first notice of hearing before the Zoning Commission~~ ^{shall be} exempt from the provisions of this article;

INSERT A

SECTION 31A-4. Disclosure Statements of Persons Having Beneficial Interests in Proposed Projects.

- 1. Disclosure of Beneficial Interests in Proposed Projects.** The Zoning Commission and Board of Appeal shall grant Zoning Relief for a Proposed Project ^{subject to this Article} only if the Applicant for such Proposed Project has filed a statement, signed under penalties of perjury, with the City Clerk, ^{With the Executive Secretary of the} the Boston Redevelopment Authority, with the ^{Executive Secretary of the} Zoning Commission in instances in which the Zoning Commission shall act on the application for Zoning Relief, and ^{Executive Secretary of the} with the Board of Appeal in instances in which the Board of Appeal shall act on the application for Zoning Relief, disclosing the true names and addresses of all Persons who have a Beneficial Interest in such Proposed Project, the amount of their Beneficial Interest accurate to within one-tenth ^{if such interest exceeds 10%,} professional of one percent, ^{and the names and addresses of all firms and personal} for the initial Disclosure Statement only, corporations employing attorneys, real estate brokers, architects, engineers, planners, surveyors, and all agents who have acted on behalf of any of the foregoing with respect to the application, ^{for the Zoning Relief.} The provisions of this section shall not apply to ^{INSERT B} ~~an owner of a corporation, partnership, or trust, the stock of which ownership interest is listed for sale to the public with the~~

~~Securities and Exchange Commission, if such owner holds less than ten percent of the corporation, partnership, or trust.~~

2. **Form of Disclosure Statement.** The statement required by this section shall be in the form shown in Appendix A to this article. If the Applicant filing the statement required by this section is a corporation, the statement shall be signed by a duly authorized officer thereof.
3. **Circulation of Disclosure Statement.** ^{Once filed by the Applicant,} ~~The Disclosure Statement shall be~~ circulated to all members of the Zoning Commission, Board of Appeal, and Boston Redevelopment Authority who are eligible to vote upon the application for Zoning Relief, ^{INSERT C}

SECTION 31A-5. Public Records. The City Clerk shall make the Disclosure Statements required by Section 31A-4 available to the public upon request.

SECTION 31A-6. Updating Disclosure Statements. The Applicant shall file with the City Clerk updated Disclosure Statements containing all the information required in Section 31A-4 annually from the date of ^{the first filing of a Disclosure Statement.} ~~issuance of Zoning Relief.~~ The updated Disclosure Statements shall specifically identify the differences in such information from that provided in the immediately preceding Disclosure Statement filed in connection with such Proposed Project. An updated Disclosure Statement shall be filed for a period of seven (7) years; ^{from the date of the first filing} ~~provided that for any~~ year in which there has been no material change in the identity of Persons having a Beneficial Interest in the Proposed Project, as disclosed in the last

Disclosure Statement filed, ^{a notice in writing by} the Applicant ^{to} shall notify in writing the City Clerk to that effect, shall satisfy the Applicant's obligations under this section.

SECTION 31A-7. Penalties.

1. **Failure to File Updated Disclosure Statement; Security of Permits Issued.** If ^{the} of a Proposed Project which ^{an} Applicant ^{who} receives Zoning Relief fails subsequently to file an updated Disclosure Statement ^{as} required by Section 31A-6, the Commissioner of Inspectional Services may take any action provided in law or equity to ^{enforce a provision of this Article} ~~remedy such a violation of zoning.~~ However, prior to seeking ^{such enforcement,} ~~any remedy of~~ ~~such a violation for failure to file an updated Disclosure Statement,~~ the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including ^{listed on the most recent Disclosure Statement filed by the Applicant} mortgagees) ^{and who has previously notified the Commissioner of} ~~any other person~~ Inspectional Services to send notice to such Person, by certified mail of such ^{intended enforcement} ~~failure,~~ and advise said Applicant and ^{each such} Person that if the updated Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's building or occupancy permit as a result of such failure to file, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of failure to file was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of an updated Disclosure Statement, ^{take any action to enforce the provisions of this Article} ~~the Commissioner of Inspectional Services shall not revoke any~~ building or occupancy permit for the Proposed Project, and no such ^{enforcement action or} ~~revocation may take place so long as the due diligence to seek compliance is~~ being undertaken. ^{INSERT D} For the purpose of this regulation, "due diligence" shall

conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file an updated Disclosure Statement.

2. **Falsification of Disclosure Statement.** Any Person who willfully files a Disclosure Statement required by this article which is false in a material matter shall be subject to the penalties of perjury pursuant to G.L. c. 268, Section 1A, and any other applicable criminal and civil penalties. If ^{the Commissioner of} ~~a court~~ ^{Inspectional} has found, in a judgement beyond ~~appeal~~ ^{Services becomes} aware that of competent jurisdiction ~~determines~~ that such a false statement in a material matter has been willfully filed, the Commissioner of Inspectional ^{INSERT E} ~~Services may take any action provided in law or equity to remedy such a~~ violation of zoning. However, prior to seeking any remedy of such a violation for materially falsifying a Disclosure Statement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including mortgagees) and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such falsification, and advise said Applicant and Person that if the true Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's Zoning Relief or building or occupancy permit as a result of such falsification, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of falsification was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of a true Disclosure Statement, the ~~Commissioner of Inspectional Services shall not revoke any Zoning Relief or~~

~~building or occupancy permit for the Proposed Project, and no such~~
revocation may take place so long as the due diligence to seek compliance is
being undertaken. For the purpose of this regulation, "due diligence" shall
conclusively mean, but not be limited to, the diligent prosecution of a civil
action to compel compliance with the requirement to file a true Disclosure
Statement.

3. INSERT F

SECTION 31A-8. Severability. The provisions of this article are severable, and if
any such provision or provisions shall be held invalid by any decision of any
court of competent jurisdiction, such decision shall not impair or otherwise affect
any other provision of this article.

Appendix A

Disclosure Statement Concerning Beneficial Interest Required by Article 31A of the Boston Zoning Code

(1) Location: _____ if such interest exceeds 10%

(2) Applicant: _____ a Beneficial Interest

(3) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a ~~direct or indirect~~ beneficial interest (including the amount of their beneficial interest accurate to within one-tenth percent) in the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE INTEREST</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(4) The undersigned also acknowledges and states that, except as stated below, individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Department of Capital Planning and Operations.

(5) I hereby state, ^{professional} under the penalties of perjury, that the names and addresses of all firms and ~~personal~~ corporations employing attorneys, real estate brokers, architects, engineer, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to the application on the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND ADDRESS OF ALL FIRMS AND PERSONAL CORPORATIONS,
AND AGENTS WHO HAVE ACTED ON SAID APPLICATION:

NAME

ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SIGNED under the penalties of perjury.

Signature: _____

Date: _____

INSERTS TO DRAFT ARTICLE 31A

INSERT A

1. Any Proposed Project for which application to the Zoning Commission or appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for the adoption of this article, provided that such Zoning Relief has been or is hereafter granted by the Zoning Commission or the Board of Appeal, as appropriate, pursuant to such application or appeal; and

2. Any Proposed Project for which application for approval of a Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan has been submitted to the Boston Redevelopment Authority prior to the first notice of hearing before the Zoning Commission for adoption of this article, provided that such Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan has been or is hereafter approved by the Boston Redevelopment Authority pursuant to such application, whether or not such application or such Development Impact Project Plan, Planned Development Area Development Plan, or Planned Development Area Master Plan is thereafter modified or amended.

INSERT B

(a) the ownership of 10% or less of the ownership interest in (i) a corporation, partnership or trust, the stock of which is listed for sale to the public with the Securities and Exchange Commission, or with a comparable regulatory body in a foreign country; (ii) a mutual insurance company or other entity owned by its policy holders; (iii) an insurance company, bank or other entity subject to control, regulation or examination by any state or federal regulatory agency or by a comparable regulatory body in a foreign country; (b) the interest of a bona fide tenant of all or any portion of a Proposed Project whether or not such tenant has an ownership interest in the Proposed Project; (c) shareholders of a limited equity or non-profit housing cooperative; and (d) any other entity which may be deemed to be exempt by the Inspectional Services Department by regulation adopted from time to time.

INSERT C

by their respective Executive Secretaries provided, however, that the failure of any such Executive Secretary to circulate the Disclosure Statement as provided herein shall not affect the validity of any Zoning Relief nor subject the Applicant to the penalties set forth herein.

INSERT D

The failure of any Applicant to file any updated Disclosure Statement required by this Article may be fully and completely cured by the filing by such Applicant at any subsequent time of an updated Disclosure Statement which sets forth the information required under Section 31A-4 as of the time when such filing was originally due or by the filing by any other Applicant of an updated Disclosure Statement which sets forth the information required under Section 31A-4 as of the time when such filing was originally due to the best knowledge of such party.

INSERT E

shall cause a written record of such finding to be filed with the City Clerk. In no event shall a falsification of a Disclosure Statement affect the Zoning Relief granted for a Proposed Project subject to Article 31A or the right to build or occupy a Proposed Project subject to Article 31A.

INSERT F

Any action by the Commissioner of Inspectional Services or any other party in connection with any violation of this article shall be commenced only within three years next after the cause of action accrues. A cause of action shall be deemed to accrue with respect to any Disclosure Statement on the date when such Disclosure Statement is required to be filed hereunder.

Doc. # 5227

ADOPTED

9/21/89

BOSTON REDEVELOPMENT AUTHORITY

SEPTEMBER 21, 1989, BOARD OF DIRECTOR'S MEETING

SCHEDULED FOR 4:00 P.M.

DEVELOPMENT

Downtown

1. Request authorization to execute a Lease Commencement Agreement with Custom House Tower Associates, concerning the rehabilitation of the historic Custom House.

Doc #5227

ADOPTED

SEPTEMBER 21, 1989

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: PAMELA WESSLING, ACTING ASSISTANT DIRECTOR
FOR URBAN DESIGN AND DEVELOPMENT
JUAN CARLOS LOVELUCK, PROJECT COORDINATOR
PAUL REAVIS, ASSISTANT DIRECTOR
FOR ENGINEERING AND DESIGN SERVICES
JACK GLASSMAN, SENIOR ARCHITECT

SUBJECT: CUSTOM HOUSE TOWER

EXECUTIVE SUMMARY:

THIS MEMORANDUM REQUESTS THAT THE DIRECTOR BE
AUTHORIZED TO ENTER INTO A LEASE COMMENCEMENT AGREEMENT
WITH CUSTOM HOUSE TOWER ASSOCIATES SO THAT THE
RESTORATION OF THE CUSTOM HOUSE MAY PROCEED AS
EXPEDITIOUSLY AS POSSIBLE.

On October 9, 1987, the Boston Redevelopment Authority (BRA) purchased the Custom House from the General Services Administration of the Federal Government (GSA) for \$11 million. The sale terms called for a downpayment of \$1.1 million, plus quarterly interest-only payments on the balance for five years, and fully amortizing payments over the following five years. The BRA's purpose in purchasing the Custom House on behalf of the City was to ensure that its redevelopment protect and enhance the historic nature and architectural integrity of this key historic resource. Retaining public ownership of the fee to the property and leasing it to a developer on a long term basis was determined to be the best way of retaining public control over the building. In addition, the lower floors of the building will be maintained as an active public use.

On June 9, 1988, the Boston Redevelopment Authority granted tentative designation to Custom House Tower Associates (CHTA) to redevelop the Custom House. This designation culminated the Request for Proposals process in which the BRA set forth the conditions under which the Custom House would be redeveloped. These conditions include the reimbursement by the redeveloper of all expenses incurred by the public in acquiring, holding, and disposing of the property; the rehabilitation of the building in accordance with strict historic preservation guidelines; and the inclusion of an active public use in the lower three floors of the building.

The selection of CHTA was made following a careful analysis of the three proposals received. The evaluation included an examination of the array of professional talent in each team,

with a particular emphasis on each team's qualifications to deliver a historic rehabilitation of the highest caliber. CHTA was determined to be the most qualified development team of the three competitors, and to have demonstrated in its proposal the most thorough understanding of those aspects of the project unique to the Custom House. These include the rehabilitation of a historic landmark of the highest national significance, the marketing of unusual office space with small floors to a specialized office market segment, and access to financial institutions and expertise to provide the capital required to finance the project.

In particular, the CHTA proposal evidenced a detailed and professional evaluation of the Custom House's structure, exterior skin, roofing, building systems, and elevators. Consideration of likely problems and potential solutions regarding building codes, life-safety codes and handicapped access were also evident. Also, CHTA's architectural firm of Beyer Blinder Belle is a nationally recognized preservation specialist, with experience on other major National Register projects such as the Ellis Island Restoration in New York City.

In the months following the tentative designation, BRA staff worked with the CHTA team to devise mutually acceptable business terms to govern the lease of the property to CHTA, which reflect those terms originally set forth in the RFP document. The BRA and CHTA engaged in an iterative process to develop a financial structure which made the project financially feasible for both CHTA and CHTA's lender, while at the same time protecting the BRA's interest in the project as set forth in both the RFP document and in the terms of the tentative designation.

The tentative designation called for the execution of a Lease Commencement Agreement within 90 days, and within 360 days, the submission of evidence of availability of equity funds as needed, firm financial commitments, and final working drawings and specifications approved by the Boston Landmarks Commission. Because of the pressing need to rehabilitate the building, and because of the apparent inactivity on the part of the CHTA team to finalize the lease document, the BRA asked Hamlen, Collier and Company, which had submitted a proposal in the original RFP competition, to update their proposal for possible consideration.

Hamlen, Collier and Company identified a financial partner, First Winthrop Corporation, and refined its development proposal. The revised development plan put forth was similar to the one originally submitted by this team. Two changes to the proposal included the payment of the entire \$9.9 million debt to the GSA at closing, and the inclusion of a purchase option whereby Hamlen, Collier and Company could, after a certain period of time and for an agreed upon consideration, purchase the fee for the property from the City, provided the City approved the purchase. The approach of Hamlen, Collier and Company to the rehabilitation of the building was unchanged from its original submission.

Subsequently, CHTA was able to respond to the requirements set forth by the BRA in the RFP as well as in the tentative designation. CHTA confirmed that it too would pay down the entire GSA debt at closing, eliminating the subordination problem for its lender. In addition, CHTA identified a tenant, Trans National Group Services, Inc. (TNGS), which has committed to pre-lease approximately 23,380 square feet of office space, and which can take advantage of the Historic Tax Credit. This eliminates the projected rent-up deficit and also increases the amount of funds available to finance the project. This tenant will become a general partner with Custom House Tower Associates as developer of the Custom House.

TNGS is a growing international firm providing financial services, credit card services, travel, insurance and membership development programs. It has sales in excess of \$150 million, and will use the Custom House as its headquarters facility. In addition, TNGS's principal owner is a major contributor to the Sports Museum of New England (the designated use for the base of the building), and is fully committed to the establishment of this facility in the Custom House project.

In order to solicit the expert opinion of the preservation community, the BRA held a meeting where both the CHTA and Hamlen, Collier and Company teams presented their respective proposals with particular emphasis on their approaches to the renovation of the Custom House. Among those present at the meeting were representatives of the Boston Landmarks Commission, the Massachusetts Historical Commission, the Society for the Preservation of New England Antiquities, the Society of Architectural Historians, and the Boston Society of Architects. The consensus of this group was that the CHTA team was proposing the highest quality renovation of the Custom House (letters from these groups are attached).

The proposal from CHTA for the renovation of the Custom House includes the following provisions (a complete copy of CHTA's proposal is attached) which are incorporated into the Lease Commencement Agreement:

1. CHTA will fully assume the BRA's obligation to the GSA upon execution of the Lease Commencement Agreement, including making all payments due the GSA under the terms of the mortgage, including the next quarterly payment due October 9, 1989.
2. CHTA will pay down the remaining GSA balance of \$9.9 million in full upon construction loan closing.
3. CHTA will pay a non-refundable deposit of \$250,000 at the execution of the Lease Commencement Agreement. Of this deposit, \$150,000 will be credited toward expenses incurred to date, and \$100,000 will be credited toward the October 9 payment to the GSA.

4. CHTA will pay \$1.35 million at construction loan closing for reimbursement of public expenses to date.
5. CHTA will provide a \$2 million interest-bearing residual receipts note due in 12 years for the remainder of the expenses incurred by the public. The interest rate shall be 9% and the payments shall be due annually.
6. CHTA will apportion 5% of net cash flow and of net refinancing/sale proceeds of the project as additional rent.
7. CHTA will pay base rent as follows: years 1 through 5, \$25,000; years 6 through 25, \$50,000; years 26 through 85, previous year's rent adjusted by CPI.
8. CHTA will pay a Payment in Lieu of Taxes as follows: \$50,000 per year, escalated by the CPI after year 12.
9. The building will be leased for 85 years, after which CHTA's interest will expire and the City will retain full interest in the property.

Upon full payment of the \$2 million residual receipts note, the BRA shall convey its fee interest in the property to the City of Boston.

Given the revisions to the business terms of the CHTA proposal, the commitments for financing and a prime tenant, and the strengths of CHTA rehabilitation proposal outlined above, the CHTA proposal is superior in terms of the interests of the public and the preservation community. This interest is principally to deliver a historic rehabilitation of the Custom House of the highest quality. In addition, the CHTA proposal as it stands now complies with the initial RFP requirements for protecting the public's interest in the purchase of the Custom House by retaining the public's fee interest in the property.

Therefore we recommend that the Director be authorized to execute a Lease Commencement Agreement between the BRA and CHTA in substantially the same form as attached hereto, in order to commence the rehabilitation of the Custom House in earnest.

An appropriate vote follows:

VOTED: That the Director is authorized to execute a Lease Commencement Agreement with Custom House Tower Associates in substantially the same form as attached hereto, including any changes or revisions deemed necessary and in the best interest of the Boston Redevelopment Authority.

CUSTOM HOUSE TOWER ASSOCIATES
c/o Trammell Crow Company
One Main Street
Suite 700
Cambridge, Massachusetts 02142

September 19, 1989

Mr. Steven Coyle
Director
Boston Redevelopment Authority
One City Hall Square
City Hall, Room 932
Boston, Massachusetts 02201

Re: U.S. Custom House
Boston, Massachusetts

Dear Mr. Coyle:

Custom House Tower Associates has been working diligently for over fifteen months to arrange workable financing for the Custom House Tower Project and to finalize development plans. Until the present time, we have been unable to announce total financing due to a variety of obstacles including high interest rates, a weakening Boston office rental market and significant total development costs associated with a first class rehabilitation of this historic building.

We are now pleased to announce that we have arranged commitments of total funding required for the development of the project. In addition, we have entered into a lease agreement with a strong prime office tenant for the building. This tenant will not only lease space in the Custom House Tower at one of the highest rental rates ever achieved in Boston, but is also committed to share in the equity funding for the project and will share in the ownership and control of the project. We are extremely pleased by the final results of our efforts. We now are prepared to move into construction at a rapid pace with an estimated December construction loan closing.

Some major features of our announcement are the following:

1. We are prepared to execute the Lease Commencement Agreement between ourselves and the BRA, and we will assume the interest payment obligation on the GSA note as of October 1, 1989. We expect to retire the principal amount of the GSA loan at a construction loan closing which could occur as soon as November 8, but is estimated at December 15, 1989. Now that 100%

Mr. Steven Coyle
Boston Redevelopment Authority
September 19, 1989
Page 2

financing has been obtained on acceptable terms, our objective is to begin construction on a fast track basis.

2. We have secured funding of \$28.5 million for the project from strong financial sources and expect an additional \$2.0 million from the New England Sports Museum for total capital of \$30.5 million. The availability of funds to be provided by the Sports Museum will not delay the project development.

CHTA has secured construction and permanent mortgage loan financing totaling \$23,500,000 from the Massachusetts Laborers' Pension Fund. This mortgage financing has a permanent loan fixed obligation of 8.5% per annum plus additional payments which are contingent upon the availability of cash flow. We believe that this mortgage structure is most suitable for the project based upon its difficult feasibility in early years. Our union fund is motivated partially by the visibility of the project as a union construction job financed by union pension funds.

CHTA has obtained commitments of equity of \$3.0 million from Trans National Group Services, the prime tenant in the building, (to be backed by a bank letter of credit). Trammell Crow Company and Trans National have provided an additional guarantee of \$2.0 million to complete the equity required. CHTA and Trans National will share in the ownership of the project and will be obligated on a 50/50 basis for certain pre-development payment requirements to the BRA and for operating deficit advances, if any are required.

3. Trans National has selected this building as its headquarters and has agreed to sign a lease for approximately 23,000 square feet at a rate of \$40 per square foot, triple net. This rate is equivalent to approximately \$50 gross rent in other downtown buildings. TNGS is a rapidly growing entrepreneurial firm which provides financial services, credit card services, travel, insurance and membership development programs. The firm has a strong balance sheet with sales of more than \$150 million and annual earnings in excess of \$20 million, both growing at high rates. TNGS plans major growth over the next decade as its international operations are expected to expand. To facilitate this growth, Trans National seeks the visibility of a downtown headquarters location with an international spirit. Trans National is a model of the type of growth company which Boston should attract and foster and is symbolic of a new generation of Boston based entrepreneurial firms.

Mr. Steven Coyle
Boston Redevelopment Authority
September 19, 1989
Page 3

4. The principal owner of Trans National is a major contributor to the New England Sports Museum and is totally committed to the joint residence of Trans National and the New England Sports Museum in the Custom House Tower, provided that the integrity of the building structure is maintained. As co-developer of the project, Trans National expects to assist the Sports Museum in becoming established at Custom House Tower. Trans National has been a pioneer in creating new methods to provide group interest and membership support for growing organizations. With direct response methods, Trans National can help the Sports Museum expand its base of support and endowment. The principal owner of Trans National is a significant supporter of the Sports Museum and has been asked to become a member of the Board of Directors of the Sports Museum.

5. Trans National will contribute over \$3.0 million in equity to the building and serve as co-developer and general partner. Trans National has selected the CHTA development plan for its sensitivity to the building. After an extensive evaluation of the CHTA development plan and the track record of the Trammell Crow Company, Trans National endorses the CHTA proposal and has expressed total confidence in the developmental abilities of the team. Both CHTA and Trans National are committed to maintain the superior architectural integrity of the Custom House Tower. As prime tenant, Trans National will live with the results.

6. Both CHTA and the tenant are highly motivated to move into and through the construction process quickly. The tenant has pressing space needs. The GSA interest obligations provide strong incentives for both equity sponsors to begin construction as soon as possible.

7. As expressed in the Lease Commencement Agreement, CHTA agrees that the BRA will retain a 5% ongoing ownership interest in the CHTA operations and will recover full ownership of the property after 85 years.

8. Neither CHTA nor Trans National expects to receive development fees in cash from the development budget of the project. Both take a long term view of the potential return on their investment. Without this philosophy, even with a prime tenant and attractive financing, the development would not be feasible without cutting quality.

Enclosed herewith, please find copies of the Lease Commencement Agreement; the letter agreement between Trans National and CHTA; the letter of intent from JHW Realty Advisors, Inc. regarding the

Mr. Steven Coyle
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Page 4

mortgage; and other support materials regarding Trammell Crow Company and Trans National.

We welcome the opportunity to discuss our plans for this project with you and your staff or with any member of the board of directors of the BRA. Please contact us if any additional information is requested.

Sincerely yours,

CUSTOM HOUSE TOWER ASSOCIATES

Trammell Crow Company

by Arthur DiMartino

Arthur DiMartino

James B. White

James B. White

**TRAMMELL CROW
ASSOCIATED COMPANIES**

BOSTON PETTY CASH ACCOUNT
101 MAIN STREET
CAMBRIDGE, MA 02142

292

53-6003
113

September 19, 1989

PAY
TO THE
ORDER OF

Boston Redevelopment Authority

\$ 250,000.00

Two hundred and fifty thousand and no/100

DOLLARS

BayBank

BayBank Harvard Trust Company
Massachusetts

FOR Custom House Tower

Richard D. Martin

⑈000292⑈ ⑆011300605⑆ 101 78686⑈

EXHIBIT C

REVISED FINANCIAL SUMMARY
AND
ANALYSIS

CUSTOM HOUSE TOWER

PREPARED FOR
BOSTON REDEVELOPMENT AUTHORITY

by
Arthur DiMartino
September 19, 1989

**CUSTOM HOUSE TOWER
PROPOSAL OUTLINE
SEPTEMBER 19, 1989**

This revised proposal incorporates all changes discussed during our previous meetings, and is intended to be an addendum to the Lease Commencement Agreement. These changes in cost and financing allow the renovation of Custom House Tower to proceed on a realistic financial basis for all parties involved.

City of Boston: Will enjoy a quality first-class renovation with public space benefits.

Boston Redevelopment Authority: At construction loan closing, the BRA will have the remaining \$9.9 million first mortgage from the GSA repaid in full. To repay the BRA for its carrying costs, Custom House Tower Associates (CHTA) has delivered a check to the BRA in the amount of \$250,000, as an initial advance payment of the BRA's investment in the Custom House project, to be applied pursuant to the Lease Commencement Agreement. That is, \$150,000 shall be applied as the initial deposit under the Lease Commencement Agreement and the balance of \$100,000 shall be an advance payment of the next quarterly payment due the GSA. As of the date of execution of the Lease Commencement Agreement, CHTA will pay the obligations of the BRA to the GSA with respect to future payments of interest under the SA Mortgage. Then CHTA will pay \$1,350,000 to the BRA from construction loan proceeds and provide a \$2 million subordinated residual receipts note. The \$2 million note will have an interest rate of 9% for twelve years, paid annually, with full principal paid on the twelfth anniversary. Interest will not begin to accrue until a Certificate of Occupancy is issued for Custom House Tower.

First Mortgage Lender: CHTA has secured favorable construction and permanent mortgage loan financing totaling \$23,500,000 from the Massachusetts Laborer's Pension Fund. The availability of these funds is confirmed by a letter of intent from JHW Realty Advisors, Inc., the Fund's real estate investment advisor.

Investors/Tenants: CHTA has entered into an agreement with Trammell Crow Company and Trans National Group Services (TNGS), a large international direct marketing and financial services firm, to provide all the equity capital necessary to complete the project. Equally important, TNGS has agreed to establish headquarters in the Custom House and lease more than one third of the available commercial space as the prime tenant at a triple net lease rate of \$40 per square foot.

Designated Cultural Use: Will enjoy the stability of a lease in a downtown location.

Payments in Lieu of Taxes; Base Rent: CHTA will make annual payments in lieu of taxes and base rent. Such amounts will be:

- a) PILOT payments: \$50,000/year adjusted by CPI from Year 12 forward
- b) Bases Rent:

Years 1-5	\$25,000/year
Years 6-25	\$50,000/year
Years 26+	\$50,000/year adjusted by CPI from Year 25

Custom House Tower Associates: Will guarantee completion of rehabilitation of Custom House Tower and provide leasing and management of the completed project. This combination will provide the development expertise and financing necessary to accomplish a first class rehabilitation consistent with our initial proposal. The investor/tenant closes the financing gap by reducing the lease-up interest and by providing enhanced financial backing to the development.

The figures included in this proposal anticipate the rehabilitation of Custom House Tower moving forward immediately and under the conditions outlined within.

The terms of this proposal are based upon current financing and construction costs and conditions. The BRA shall supply to CHTA reasonable evidence supporting the BRA's expenditures to date, and remaining obligations of the BRA including financial obligation to the GSA and others in regards to the Custom House Tower. This proposal is intended to present important issues and assumptions, but shall not be final until agreed and approved in writing by both parties and their attorneys.

CUSTOM HOUSE TOWER

SOURCES OF FUNDS

SOURCES:

First Mortgage/Participating Mortgage:	\$23,500,000
Equity Investor:	5,000,000
Museum Contribution:	<u>2,000,000</u>
Total Sources:	\$30,500,000

USES:

Development Budget

Development Costs:	\$ 1,986,000
Soft Costs:	2,430,000
Hard Costs:	22,749,000
Interest Costs:	<u>3,335,000</u>
Total Uses:	\$30,500,000

CUSTOM HOUSE TOWER

DEVELOPMENT BUDGET

Development Costs

General & Administrative	\$ 600,000
Builders Risk Insurance	100,000
Legal & Title	320,000
Leasing Brochures, Marketing	200,000
Leasing Commissions	491,000
Contingency, Soft Cost	<u>275,000</u>

Total Development Costs: \$ 1,986,000

Soft Costs

Deposit to BRA	150,000
Repayment to BRA	1,350,000
Architect & Engineering	700,000
Testing & Inspection	20,000
Permit, Licenses & Fees	<u>210,000</u>
Total Soft Costs:	\$ 2,430,000

Hard Costs

Building & Site	\$ 9,900,000*
Shell	8,200,000
Tenant Finish	3,800,000
Site Work	-0-
Linkage	24,000
Construction Management	200,000
Contingency, Hard Costs	<u>625,000</u>
Total Hard Costs:	\$22,749,000

Interest Costs

Financing Fees	625,000
Interest through shell, 16 months	2,310,000
Losses through Lease-up	<u>400,000</u>
Total Interest Costs	\$ 3,335,000

TOTAL COST: \$30,500,000

* This amount will be used to reduce the remaining G.S.A. obligation.

FINANCING PRO FORMA

Rental Income: (84,920 s.f. at \$40.24)	\$3,421,647
Less: Vacancy 5%	< <u>171,082</u> >
Adjusted Rental Income	\$3,250,565
Parking Revenue	90,000
Less: Operating Expenses (\$5.78 psf)	< 476,739 >
Net Operating Income	\$2,863,826

Assumptions

Rent Escalation-Net	4 1/2 Yearly
Parking Revenue: \$250 per space, per month, 30 spaces	
Operating Costs including Real Estate Taxes and Linkage:	\$5.78

Building Value

Re-finance in Year 7 at 7.25% Capitalization Rate	\$39,000,000
Remaining Mortgage:	\$23,500,000
Equity Investor	\$ 5,000,000
BRA Note:	\$ 2,000,000
Net Proceeds	\$ 9,000,000

**ANALYSIS OF
HISTORIC TAX CREDITS**

1) Historic Rehab Tax Credits

1986 Tax Law provides an incentive for historic preservation by including a 20% tax credit on the amount of "qualified rehab expenditures", exclusive of the purchase price.

Estimated \$18 million for qualified rehab expenditure.
(\$18 million x 20%).

Valuation - \$3.6 million.

Available for financing, $.60 \times \$3.6 \text{ mil.} = \2.16 mil.

CUSTOM HOUSE TOWER

The following summarizes a development proposal which should permit the Custom House renovation to proceed on a sound financial basis and provide realistic expectations for the success of all partners.

Use/Floor Area

A. Basement

- o Museum and Retail Uses

B. First Floor

- o Open to Public
- o Office and Handicapped Access
- o Museum Gift Shop

C. Cultural Space -- 2nd and 3rd Floors

- o Rotunda Open to Museum and Office Tenants
- o Side Areas for Exhibits
- o 12,000 s/f

D. Office Access

- o State Street and Center Street on ground floor
- o Main staircase to Rotunda through Museum

E. Office Floors:

- o Floors 4-22 will be office floors

F. Top Floors:

- o Floors 23-25 will be available to the public as reception and meeting space, and for observation when not so used on weekends. These floors will also be available for scheduled and supervised weekday tours. A definitive schedule that will allow for minimum periods of public observation will be established.

G. Building Service and Parking Area:

The area adjacent to the building bounded by State Street, Center Street and McKinley Square will be used as the building service and parking area for 30 vehicles, provided such use is approved after review of traffic, historic, and environmental impacts.

H. Public Park

The area adjacent to the building, bounded by State Street, India Street and Center Street will be rehabilitated as a park. Until this park is completed, CHTA will control this area. Upon completion CHTA will control and maintain this area and operate retail kiosks similar to those at Faneuil Hall.

Assumptions and Objectives

A. Historic Review -- completed within six months and consistent with a construction budget of \$8,100,000.

B. Financial Structure

- o \$150,000 deposit to be paid BRA on or before September 19, 1989.
- o \$272,000 interest payment obligation of the GSA note which is due on October 6, 1989 is paid in advance as follows:
 - \$100,000 on or before September 19, 1989
 - \$172,500 due prior to October 5, 1989
- o As of the date of execution of the Lease Commencement Agreement, CHTA will pay the obligations of the BRA to the GSA with respect to future payments of interest under the GSA Mortgage.
- o Prepayment of remaining \$9.9 million principal under the G.S.A. Mortgage from the first Draw at the signing of Construction Financing.
- o CHTA is prepared to execute the Lease Commencement Agreement and assume the interest payment obligations of the GSA note beginning October 1, 1989. The CHTA shall make future payments of interest due to the GSA.
- o Repayment of \$1.35 million to the BRA from the first draw at the closing of construction financing.
- o An 9% unsecured subordinated receipts note will be made by CHTA to the BRA for \$2 million. Interest on this note will be paid annually at a rate not to exceed 9%. This note will be prepayable without charge, in whole or in part, at any time prior to principal due date on its twelfth anniversary. The note will be non-recourse except as to the interest of CHTA in the project,

subordinated as to interest due the first mortgage holder. The BRA and CHTA shall be in good faith work to establish the priority of payment of the note (after the lender's mortgage) as the elements of the final financing plan are determined.

Ownership Structure

Custom House Tower Associates and Tenant/Investor will be general partners, all other parties will be limited partners and share in available cash flows. CHTA cash flows will be shared by CHTA and Tenant/Investors.

1. CHTA will provide a guarantee of completion of the rehabilitation.
2. Distribution of cash flow will be made as follows:
 - a. Cash Flow from Operations:
 1. First Mortgage 8.5% - cumulative Preferred Return to First Mortgage holder.
 2. Remaining Cash from Operations will be distributed as follows:
 - a. General Partners/Investors 95%
 - b. BRA 5%
 - b. Example of Refinancing in Year 7.
 1. First Mortgage/Participating Mortgage
 2. Net Proceeds of Refinancing
 - a. General Partners/Investors 95%
 - b. BRA 5%
 - c. Proceeds from subsequent sale or refinancing will be distributed as follows:
 1. First Mortgage/Participating
 2. Net Sale Proceeds
 - a. General Partners/Investors: 95%
 - b. BRA: 5%

BRA Ground Lease Provisions

1. New England Sports Museum will receive a rent subsidy of approximately \$396,000 per year for seven years in exchange for their investment of \$2,000,000. The Museum will submit evidence satisfactory to the lender that funds will be

available on a timely basis to carry out the Museum's obligations.

2. G.S.A. - Paid in full at lease commencement.
3. Lease Term: 85 years.
4. Premises: Custom House Tower and surrounding area bounded by State Street, Center Street, McKinley Square and India Street.
5. Rental, Linkage, PILOT, and additional annual payments: As mentioned herein shall not be cumulative. Any charges for such purposes and payment against obligations of CHTA to the BRA under the residual receipts note shall be offset against distributions due the BRA under its percentage of remaining cash from operations.
6. Lessee will have complete control of entire premises for the duration of the lease term, as long as uses are consistent with those stipulated.
7. Security: A first leasehold mortgage on the borrower's interest as tenant under the lease of the Custom House from the Boston Redevelopment Authority to the borrower. The owner's fee interest will be unsubordinated, but the lease should contain these provisions for the benefit of the lender if borrower defaults in its obligations as tenant:
 - a. Subordination of any rental or other payments to the landlord during the default.
 - b. Owner must give copies of all default notices to lender. No action to terminate the lease for tenant's default will be effective until the lender has opportunity to cure over extended time periods, including time to take possession, if necessary. Lender will not be obligated to perform any actions of tenant that, by their nature, lender would be incapable of performing.
 - c. Lenders' right to a "new lease" on the same terms as the original lease, should the notice and cure provisions prove to be overlooked or inadequate.
 - d. Such other protections as are customary in a mortgageable long-term ground lease, or as may be appropriate to this transaction. These would include the right to mortgage, recognition of the mortgagee, etc.

8. Historic Tax Credits: Pursuit of historic tax credits are an integral part of this rehabilitation. The general partner will make all decisions concerning historic tax credits and receive all proceeds.
9. \$250,000 payment to BRA non-refundable, except in the event of BRA default.
10. The various obligations of Custom House Tower Associates hereunder, including those in assuming the Boston Redevelopment Authority's obligations to the GSA and under said residual receipts note, shall be secured by appropriate assignments or mortgages of the interest of Custom House Tower Associates in the Custom House and its rights thereto, but shall otherwise be non-recourse to any and all partners in Custom House Tower Associates.
11. The Boston Redevelopment Authority will apply its distributions of current net cash flow set out above for the benefit of the homeless people of the City of Boston.
12. The foregoing terms and obligations, including time deadlines, are based upon our present best understandings of the financial and other elements of this transaction. Our ability to meet those time deadlines and to determine what, if any, modifications of the foregoing provisions might be needed, will depend upon our working promptly and in good faith with the BRA and with other entities. Therefore, we both agree so to work promptly and in good faith together and with others to the end that the Lease Commencement Agreement may be executed on terms acceptable to all interested parties no later than September 30, 1989 which date may, if the first \$75,000 payment has then been made, be extended to October 25, 1989 by either party upon notice to the other given at any time prior to. If, by September 30, 1989 (or the extended date, if applicable) the Lease Commencement Agreement has not been executed then the BRA Director shall be entitled, after 30 calendar days' prior written notice to us, to advise us that we may be deprived of our tentative designation and that a substitute designee may be sought. CHTA may terminate its obligations hereunder at any time upon 15 days prior written notice to the BRA.

Your right so to proceed to seek a substitute designee shall not exist if a) our failure to execute the Lease Commencement Agreement within the time herein required shall result from your default hereunder or from causes beyond our control, or b) we execute the Lease Commencement Agreement before the expiration of such 30-day notice period.

13. Upon the complete reimbursement of expenses incurred and the amortization of the note from CHTA to the BRA, the BRA will convey its fee simple and leasehold interest in the Custom House to the City of Boston.



TRANS NATIONAL

2 Charlesgate West
Boston, Massachusetts 02215
(617) 262-9200

Steven B. Belkin
Chairman of the Board

September 18, 1989

Custom House Tower Associates
c/o Trammell Crow Company
One Main Street
Suite 700
Cambridge, Massachusetts 02142

Attention: Mr. Arthur D. Martino
Mr. James White

Dear Sirs:

Trans National Group Services, Inc. ("TNGS") is pleased to commit in writing our agreement to become a participant with Custom House Tower Associates ("CHTA") in the development of the Custom House Tower rehabilitation project (the "Project") in accordance with the terms and conditions expressed below. While this letter is not a complete representation of our agreement, it is intended to cover the principal issues which we have discussed in recent weeks. We expect to execute a comprehensive agreement between CHTA and TNGS (the "Joint Venture Agreement") as soon as our joint team has been designated by the Boston Redevelopment Authority ("BRA") as the developer for the project.

A. The Project will be owned by a limited partnership (the "Partnership") in which CHTA and an affiliate of TNGS will be general partners (the "General Partners"). During the period of time up to the first anniversary of completion of construction (the "Transfer Date"), CHTA will be the Managing General Partner with overall control responsibility and reporting responsibility to TNGS and to others with approval required by TNGS for certain critical decisions to be defined in the Joint Venture Agreement. After the Transfer Date, TNGS will become the Managing General Partner with overall control and reporting responsibility to CHTA and to others with approval required by CHTA for certain critical decisions to be defined in the Joint Venture Agreement.

B. It is agreed that TNGS will provide 50% of the capital advances required to make payments to the BRA prior to the closing of a construction loan for the Project. It is understood that CHTA will advance \$250,000 on or before the date of confirmation of the designation by the BRA (expected to be September 21, 1989) of CHTA as developer of the Project. TNGS agrees to advance \$250,000 on or before the date that the Joint Venture Agreement is executed between TNGS and CHTA. Thereafter, if

additional pre-development payments are required to be paid to the BRA, it is understood that they will be paid 50% by CHTA and 50% by TNGS. It is expected that these pre-development advances of payments to the BRA will be reimbursed at the time of the construction loan closing.

C. TNGS understands that a construction and permanent first mortgage loan has been committed to the Project in the maximum principal amount of \$23,500,000 with a basic permanent loan interest rate of 8.5% and other terms and conditions. It also is expected that approximately \$5.0 million in equity capital is required for the complete funding of the development of the Project as planned by CHTA. It is expected that one or more limited partner investors will provide amounts of at least \$5.0 million in equity investment capital. However, in order to assure the first mortgage lender and others that this equity capital will be available when needed, TNGS will commit to provide a guarantee backed by a bank letter of credit in the amount of \$3.0 million, in form and substance satisfactory to the first mortgage lender, at the time of the construction loan closing (expected to be on or before December 15, 1989), and CHTA is expected to provide additional guarantees of credit on terms satisfactory to the lender, to TNGS and to CHTA in the amount of \$2.0 million. It is understood that upon admission of investor limited partners, the commitment of capital contributions by the investor limited partners will allow first, a release of the guarantee by TNGS to supply \$3.0 million in equity capital, and second, a release of the guarantee by CHTA to supply equity capital. If commitments of capital by limited partners are delayed or not obtained, then the guarantees of TNGS and CHTA will remain in effect.

D. It is understood that the Trammell Crow Company will serve as a construction manager and will hire a general contractor for the Project in accordance with a construction contract, plans and specifications which must be in form and substance satisfactory to TNGS and its advisors. The Trammell Crow Company will be entitled to a market rate construction management fee which must be acceptable to TNGS. The Trammell Crow Company must arrange for a guarantee of the completion of construction of the Project in a form which is deemed satisfactory to TNGS, CHTA and the Lender. If Trammell Crow should be required to advance funds to complete construction under the construction guarantee agreement, such advances would be evidenced by residual receipt notes payable out of a sale or refinancing of the project, subject to certain prior obligations. It is understood that neither the construction lender nor the permanent lender will have recourse

to TNGS or any affiliate beyond the \$3.0 million equity funding guarantee.

E. TNGS will become the prime tenant in the Project and will execute a five-year lease (the "TNGS Lease") for floors 13 through 18 in the Project which contain approximately 23,380 square feet of net rentable square feet. The net rent payable for the TNGS Lease will be at the rate of \$40 per rentable square foot. Certain terms and conditions of the TNGS Lease which have been agreed upon are outlined in Exhibit I attached hereto. TNGS will enter into a comprehensive lease agreement with the Partnership within 60 days of execution of the Joint Venture Agreement.

F. It is understood that all beneficial interests available to the development team in excess of development costs, cash flow from operations or capital events, or other development interests or fees will be shared on the basis of 50% to CHTA and 50% to TNGS. However, subject to an opinion from tax counsel, a higher proportion of taxable losses available to the General Partners may be allocated to TNGS or an affiliate. If the Project should encounter operating deficits after the completion of construction which are not funded by Partnership reserves or development sources, it is understood that such deficits will be funded 50% by CHTA and 50% by TNGS. Such operating advances would be considered Operating Deficit Loans and would be repayable to the parties on a pro-rata basis from subsequent operating cash flow after certain prior obligations. In the event that either CHTA or TNGS should fail to honor its obligations to make funding requirements for the development or operation of the Project, the defaulting party may be replaced and may forfeit some or all of its beneficial interests and rights in the Partnership. The Joint Venture Agreement will contain provisions specifying the terms and conditions of such a potential transfer of interests which must be acceptable to both TNGS and CHTA.

G. The Partnership expects to employ the Trammell Crow Company as the property management agent and the leasing agent for the Project at competitive fees. The form and substance of the management contract and leasing contract must be approved by TNGS.

H. This agreement is based upon the truth, accuracy and reasonableness of the assumptions regarding the development and operation of the Project which are attached hereto as Exhibit II as well as a review and approval by the partners within CHTA and by the counsel representing CHTA, TNGS and Trammell Crow of this agreement. This agreement also is subject to the approval by TNGS, CHTA and Trammell Crow and their respective counsel of

various development documents including, without limitation, the Lease Commencement Agreement, the Mortgage Loan Agreements, the TNGS Lease Agreement, the New England Sports Museum Lease Agreement, the BRA Development Agreements, the Construction Contract, Leasing Contract and the Management Contract.

I. It is understood that certain costs incurred by TNGS, Trammell Crow and CHTA in connection with the development, financing and renting of space of the Project will be reimbursed out of the development funds available for the Project. Such reimbursements shall be reasonable and verifiable, and such reimbursements for TNGS will include, without limitation, attorneys' fees, accountants' fees, consultant fees, independent inspection or supervisory fees during the construction of the Project for the benefit of TNGS, architectural or design fees for the TNGS Lease space, signage within or outside the building, and lease advisory fees and bank letter of credit fees. Neither CHTA nor TNGS shall have any liability to each other beyond funds actually extended to date prior to the time that the Joint Venture Agreement is in full force and effect.

J. It is understood that although TNGS will provide financial support for the Project, TNGS is depending upon the ongoing financial and operational viability of CHTA. TNGS will require ongoing financial disclosures from the General Partners of CHTA or their affiliates during the period until the Transfer Date, and a deterioration in financial condition or a departure of any key employee may be deemed a default under the Joint Venture Agreement. The CHTA partnership agreement must be approved by TNGS, and the allocation of interests within CHTA must be acceptable to TNGS, and no partner in CHTA may pledge or transfer his interests in CHTA without the consent of TNGS.

If the foregoing is acceptable to CHTA, please acknowledge by signing in the appropriate spaces provided below.

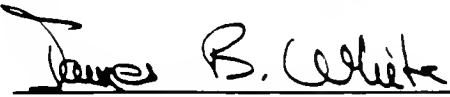
Trans National Group Services, Inc.

By: Steven B. Belkin
Steven B. Belkin

Custom House Tower Associates
September 18, 1989
Page 5

The foregoing is acknowledged and accepted this 18th day of
September, 1989.

Custom House Tower Associates by its
General Partner, ~~James B. White Partners~~

By: 
James B. White
General Partner of James B. White Partners

Trammell Crow Company ~~by its duly authorized officer~~

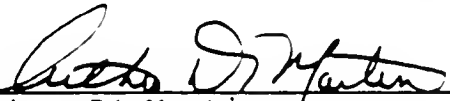
By: 
Arthur Di Martino
Trammell Crow Company

Exhibit I

Summary of TNGS Lease Terms

Tenant: Trans National Group Services, Inc.

Space to be Leased: Approximately 23,380 net rentable square feet on floors 13 through 18 in the Custom House Tower.

Lease Commencement Date: Lease payments will commence on the first day of the month following the date on which all tenant improvements are completed in accordance with plans and specifications after the tenant has taken occupancy of the space. This date currently is expected to occur by June 30, 1991.

Lease Rate: The TNGS Lease will require payments at a rate of \$40 per net rentable square foot per year for a period of five years. This rent will be on a net basis with the tenant paying for shared allocations of operating expenses, management fees, taxes, maintenance expenses and the like, but not including capital expenditures, reserves, depreciation, amortization or sinking funds. This agreement is based upon the estimate by CHTA to TNGS that operating expenses allocable to TNGS in the first full year of occupancy (1992) will equal approximately \$5.75 per net rentable square foot, not including individually metered electricity for lights and plugs within the space (which is estimated to cost \$0.60 per square foot).

Tenant Improvement Budget: The Partnership shall provide an allowance of \$50 per net rentable square foot for tenant improvements within the TNGS space. TNGS shall be responsible for preparation of initial plans, and the Partnership shall reimburse TNGS for this cost out of the tenant improvement budget. The Partnership will prepare working drawings and specifications for construction of the TNGS space after approval by the Partnership and for any building modifications needed to meet the plans of TNGS.

Renewal Options: TNGS will have two successive five-year option periods to renew the lease of the initial space at the continuing rate of \$40 per net rentable square foot per year. Thereafter, TNGS will have two ten-year option periods at the then current equivalent market rate.

- Parking:** TNGS will be entitled to rent from the Partnership ten outdoor parking spaces adjacent to the building and one indoor space at the prevailing downtown rate for parking spaces.
- Fitness Center and Restaurant:** A fitness center will be operated on the nineteenth floor by the Partnership or its agent for the use of the employees of the tenants in the building. A restaurant or library or other public service facility will occupy floors 20 through 22 such that there will be no commercial office tenants on floors above the TNGS space.
- Signage:** TNGS will have permission, subject to appropriate approvals, to place signs and/or awnings on the exterior of the building identifying the building and the prime tenant.
- Access to NESM and Other Facilities:** Employees of TNGS will be entitled to access and use of the New England Sports Museum, the fitness center and to limited use of the function areas planned for floors 24 and 25.
- Public Access:** Floors 23-25 will be available to the public as reception and meeting space, and for observation when not so used on weekends. These floors also will be available for scheduled and supervised weekday tours. A definitive schedule that will allow for minimum periods of public observation will be established.
- Options for Additional Space:** TNGS would like to reserve the right to rent floors 11 and 12 at current market rates until a significant portion of the initially vacant space has been leased. In addition, in order to accommodate expansion plans, TNGS may wish to obtain options at market rates to rent space at the termination of other tenant leases for certain of floors 4 through 12.

The provisions outlined in this summary are expected to be clarified and superceded by a lease agreement between the Partnership and TNGS to be executed within sixty days of the execution of the Joint Venture Agreement and are subject to any approvals required by the lender and the BRA.

5355 Town Center Road, Suite 1101, Boca Raton, FL 33486 • 407/391-8700
Exchange Place, Suite 3600, Boston, MA 02109 • 617/227-6932

September 18, 1989

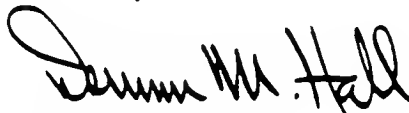
Mr. Arthur DiMartino
Custom House Tower Associates
c/o Trammell Crow Company
One Main Street
Cambridge, Massachusetts 02142

RE: Custom House Tower
Boston, Massachusetts

Dear Buzz:

Enclosed is the letter outlining the terms under which we are prepared to proceed with a participating loan. This will certify to you and the BRA that the Massachusetts Laborers' Pension Fund meet the test of an "institution" as defined in the BRA requirements, with a net worth exceeding three hundred million dollars (\$300,000,000).

Sincerely,



Denison M. Hall
Principal

DMH/emd

Enclosure

0918001

5355 Town Center Road, Suite 1101, Boca Raton, FL 33486 • 407/391-8700
Exchange Place, Suite 3600, Boston, MA 02109 • 617/227-6932

September 13, 1989

Mr. Arthur DiMartino
Custom House Tower Associates
c/o Trammell Crow Company
One Main Street
Cambridge, Massachusetts 02142

RE: Custom House Tower
Boston, Massachusetts

Gentlemen:

This letter will outline the general terms and conditions under which JHW Realty Advisors, Inc. ("JHW"), not individually, but solely in its capacity as real estate investment manager for The Massachusetts Laborers' Pension Fund ("The Fund" or the "Lender") is prepared to enter into a definitive written agreement ("The Commitment") to make (or cause to be made) a participating mortgage loan (the "Fund Mortgage") secured by a first mortgage loan on the Property (as hereinafter defined). Based on the information which has been supplied to JHW by Custom House Tower Associates ("CHTA" or the "Borrower") and subject to satisfactory completion of our due diligence process, JHW is prepared to proceed with this transaction on the following terms:

Property: The Property, known as The Custom House Tower, will consist of a thirty-story Class A, fully renovated office building which upon completion will contain approximately 84,920 square feet of net leasable area and thirty (30) outdoor parking spaces. The Property is located in Custom House Square in the City of Boston, Massachusetts. A site plan of the Property is attached hereto as Exhibit A.

Security: Security for the Fund Mortgage will be a first leasehold mortgage lien; however, the ground lessor, The Boston Redevelopment Authority, will be required either to

Letter to Mr. Arthur DiMartino
September 13, 1989
Page 2

subordinate its fee interest to the Fund Mortgage or to provide certain protection and comfort to the first mortgagee as is customary in mortgageable long-term ground leases. The level of protection and comfort must be satisfactory to JHW and its counsel, Messrs. Brown, Rudnick, Freed & Gesmer in our sole discretion.

Borrowers: Custom House Tower Associates

Loan Amount: JHW will make (or cause to be made) a construction/permanent participating loan in the maximum amount of twenty-three million five hundred thousand dollars (\$23,500,000). It is the intent of JHW to retain a commercial bank to oversee and to administer to the construction loan portion of this financing. Upon completion, the loan will become permanent participating loan.

Interest Rate: Construction Loan - Prime rate of interest floating as established by the Commercial Bank retained by JHW to administer to the Construction loan.

Permanent Loan - 8.5%, interest only, payable monthly.

Term: Construction Loan - Not more than 24 months.

Permanent Loan - 15 years from commencement date of permanent loan.

Non-Recourse

Loan: The loan will be written without recourse to the Borrower.

Completion

Guarantee: Both the Borrower and Trammell Crow Company will guarantee lien-free completion of the project. The General Partners' interest in CHTA shall be pledged as security for such guarantee, which shall be subject to enforcement by specific performance for the benefit of the Fund.

Equity

Requirements: Prior to closing of the Construction Loan portion of the financing, the Borrower will provide in a form satisfactory to JHW and its counsel, evidence of its ability to meet a five million dollar (\$5,000,000) equity requirement imposed on the Borrower by the Fund.

Prior to closing of the Construction Loan portion of the financing, The New England Sports Museum ("NESM") will provide in a form satisfactory to JHW and its counsel, evidence of its ability to meet a two million dollar (\$2,000,000) equity requirement.

Preleasing:

Prior to closing of the Construction Loan portion of the financing, Borrower will have entered into leases reviewed and approved in writing by JHW and its counsel with the following tenants in accordance with the following lease rate square feet and term.

		Gross Lease	
<u># s.f.</u>	<u>Tenant</u>	<u>Rate/s.f.</u>	<u>Term</u>
15,000	NESM	\$17.78	3 years
<u>25,000</u>	Other	\$45.78	10 years
40,000	tenants		

**Prepayment
Privilege:**

None for 9 years from commencement of permanent loan; thereafter, in full only and with a premium of both:

- A. 5% of the outstanding balance, declining 1% per annum to a minimum of 1%; and
- B. an amount equal to the greater of (1) or (2) below:
 - 1. the highest amount of Contingent Interest due and payable for any of the three full Fiscal Years immediately preceding the date of prepayment capitalized at 9%; or

2. 50% of either:
 - a. the sale proceeds from an unaffiliated, bonafide third party purchaser after deducting payment of the principal balance of the subject loan, the premium payable in A. above, brokerage commissions and closing costs (incurred) customary for a sale of this type; or
 - b. the refinancing proceeds after deducting payment of the principal balance of the subject loan, the premium payable in A. above, brokerage commissions and closing costs (incurred) customary for a refinance of this type; or
 - c. the balance remaining after deducting the principal balance of the subject loan and the premium payable in A. above from the appraised value of the subject property.

Fees to Lender: Four hundred seventy thousand dollars (\$470,000) in the aggregate payable as follows and deemed to be earned at time of payment by the Borrower:

1. One hundred thousand dollars (\$100,000) in cash, upon issuance of commitment and acceptance of same by Borrower.
2. One hundred thousand dollars (\$100,000) in cash, upon the day the Lender notifies Borrower that Lender has completed its Due Diligence and is prepared to close the loan.
3. Two hundred seventy thousand dollars (\$270,000) in cash upon construction loan closing.

Closing Costs: Borrower shall pay normal and reasonable closing costs of Lender including legal, inspection fees, and costs, third party consulting fees, appraisal, survey, and title insurance expenses.

Contingent Interest: Contingent interest for the loan ("Contingent Interest") for each fiscal year shall be 50% of the amount by which Gross Receipts exceed the Base Amount for such fiscal year. The Base Amount shall be three million one hundred fifty-four thousand six hundred forty-one dollars (\$3,154,641). For purposes of computing contingent interest, there will be no deductions from Gross Receipts for any expenses except for increases in gross receipts attributable to operating expense increases passed through, and paid by tenants as additional rent.

Budgets: Attached hereto as Exhibit B are construction and operating budgets for the Property which the Borrower represents and warrants to be the best and most accurate estimates of development cost and operating income and expenses currently available.

Annual Audited Financial Statements: Within ninety (90) days of the end of each fiscal year, Borrower shall furnish to Lender annual financial statements prepared in accordance with generally accepted accounting principles and in form acceptable to Lender (the "Annual Audited Financial Statements"). Such Annual Audited Financial Statements shall have been examined in accordance with generally accepted auditing standards by a firm of independent certified public accountants acceptable to Lender, which firm shall have been engaged by Borrower to provide an unqualified opinion (audit) on such Annual Audited Financial Statements.

Lender may require that Annual Audited Financial Statements be prepared and examined as described herein for periods of less than an entire fiscal year, when necessary, to serve as a basis for Contingent Interest.

**Leasing and
Management:**

The Borrower shall, subject to the Lender's approval, hire an acceptable Leasing and Management Agent and/or Agents to manage and lease the Project both during construction and when completed, for a property management fee and a leasing fee, as set forth in the Budgets approved by Lender. In the event of a default which remains uncured by Borrower under the terms of the Mortgage or related documents, the Lender shall have the right exercisable on a reasonable basis, to cause the removal of the Agent(s) and to approve the substitution of another Agent or Manager. No party or entity related to the Borrower shall participate in the management or leasing of the Project unless approved by Lender, Trammell Crow, or an affiliate, is the approved initial management company and leasing agent; Lender shall have the right to approve any subsequent management company and leasing agent presented by the Borrower which approval shall not be unreasonably withheld.

Cost Savings:

It is understood that there may be savings in direct and indirect construction costs which will be identified by category after the Initial Loan Closing Date. Any net cost savings in the aggregate of direct or indirect construction costs shall reduce the Loan or be used in the Property. Any fees or payments to CHTA or their affiliates not permitted herein, in the Partnership Agreement, the Development Budget and/or in the Management Agreement, must be first approved by Lender.

Signs:

If requested by the Fund, Borrower shall during construction of the Project place the name of the Fund on a sign on the Project, the location of which shall be at the discretion of Borrower, naming the Fund as a source of financing. The Fund may also release publicity concerning the transaction to the media of its choice, indicating that the Borrower is a client of Lender and disclosing the amount of the Loan.

**Amendments to
Partnership
Agreement:**

Borrower's Partnership Agreement shall not be amended without approval in writing by Lender, which approval shall not be unreasonably withheld.

Due Diligence:

Lender's due diligence shall include, but not be limited to, review and approval of the following documents and information, which must be satisfactory to the Lender in its sole discretion and which is to be provided at Borrower's sole expense:

1. Borrower's Partnership Agreement and all amendments thereto.
2. An M.A.I. Appraisal, including detailed information concerning the various components of the Project. Such appraisal must use the R41(c) appraisal methodology, not discounted for lease-up.
3. Ground lease between CHTA and the BRA.
4. An ALTA mortgage title insurance policy commitment, without exceptions other than matters approved in writing by Lender accompanied by a copy of the policy which will be issued as a result thereof (including true and correct copies of all title exceptions), insuring Lender's Mortgage as a

valid first mortgage lien. Both said commitment and the issuing company must be reasonably satisfactory to Lender. The obligation of Lender to make any disbursement of the loan to Borrower after the Initial Loan Closing is subject to the receipt by lender of an endorsement to the mortgagee's title insurance policy, indicating that since the last advance there has been no change in the state of title other than those affirmatively insured over and no survey exceptions other than those affirmatively insured over not previously approved by Lender which approval shall not be unreasonably withheld, which endorsement shall have the effect of increasing the coverage of the mortgagee's title insurance policy by an amount equal to the advance being made.

5. An ALTA property survey by a registered land surveyor, certified to and satisfactory to Lender and title insurance company, showing compliance with all zoning requirements, and reflecting the location of all recorded title exceptions, the dimensions and location of all existing improvements, all utilities, the locations of all roads, easements, means of access to public streets, encroachments and all other physical conditions affecting the title and use of the land, the location of all dominant adjacent or surrounding properties with easements over any part of the Project land, and a certificate stating whether or not the Property lies within an area designated as having special flood hazards under the Flood Disaster Protection Act of 1973, as amended.

6. A complete and detailed schedule of all insurance coverage with respect to the Project or any part thereof and pro forma policies, with coverage and amounts acceptable to Lender. Said insurance shall include a liability insurance policy reflecting coverage of events and in an amount acceptable to Lender, and a Builder's Risk Multi-Peril Policy in an amount equal to the highest insurable value of any and all of the Improvements providing full coverage which shall be in place prior to commencement of construction. At the expiration of the construction period (for these purposes no later than the date on which the required Builder's Risk policy ceases to cover the property) an all Risk Multi-Peril policy in an amount equal to the highest insurable value of any and all improvements shall be issued. All policies must name Lender's interest in the Project in a manner satisfactory to Lender's counsel. All insurance shall be issued by a company or companies acceptable to Lender. Borrower will also provide Lender, if required and reasonably available, with a flood insurance policy written in compliance with the National Flood Insurance Act, as amended and shall provide liability coverage in amounts reasonably acceptable to Lender, only to the extent the Improvements are located within such flood plain.
7. Complete set plans and specifications.
8. Evidence of availability of thirty (30) parking spaces on site, and storm and sanitary sewer and water facilities, roads, gas, and/or electricity to service the Property.

9. An engineer's written opinion indicating that the Property site meets all applicable and unwaived governmental requirements for grade above mean high water level, or, such grade level requirements as may be pertinent.
10. Approval of the Property by all necessary environmental, health and safety boards, zoning and planning commissions, and any other material land use regulatory bodies.
11. Evidence of compliance with all laws, ordinances, rules, regulations and restrictions affecting: (a) the Property; (b) the operation of the Property for the intended use; and (c) the consummation of this transaction.
12. Copies of all executed leases, and all contracts (whether leases or otherwise) with Tenants, and a copy of the proposed lease form. For new Leases, Borrower will forward to Lender a lease approval request, which shall be approved or disapproved within 10 days after receipt by Lender (except that any failure of Lender to respond by the end of such 10 day period shall be deemed to be an approval of such lease request).
13. Documentation, satisfactory to Lender, such that all tenant leases are subordinate to Lender's mortgage and all tenants agree to attorn to Lender (provided Lender agrees not to disturb tenants' occupancy of the leased premises pursuant to the terms of such) in the event of foreclosure by Lender, and to provide estoppel letters at Lender's request.

14. Opinions from Lender's counsel and from Borrower's counsel including opinions: (I) that the Loan, if closed pursuant to the terms thereof, will not violate the laws of the Commonwealth of Massachusetts, (II) that the Loan documents are valid and enforceable in accordance with their respective terms, and (III) with respect to such other matters as Lender shall reasonable require.
15. An opinion from Lender's counsel that the Loan does not violate the Employee Retirement Income Security Act of 1974, as amended, to be obtained by Lender.
16. Inspection reports (copies of which shall be given to Borrower) from an independent architect/engineer selected by Lender (hereinafter referred to as "Lender's Inspecting Engineer"), satisfactory to Lender covering: (a) plans and specifications for improvements, (b) cost estimates of work to be completed including all hard and soft costs (hereinafter referred to as "Cost-to-Complete the Improvements"), (c) building shell, (d) such other reports as hereinafter specified, and (e) a time schedule for construction and a monthly draw schedule.
17. A fully executed construction contract which shall be acceptable to Lender, accompanied by 100% Payment, Performance and Lien Bonds, fully paid, naming Lender as an insured, and bonding all subcontractors performing work on the Project at a cost equal or greater than two hundred fifty thousand dollars (\$250,000). The Borrower shall obtain and submit two years of financial statements from the General Contractor for the Lender's review and approval.

18. A list of all contractors and subcontractors performing any work or delivering any materials with respect to the project. It is understood that all contractors and subcontractors will be union contractors or subcontractors as the case may be.
19. Copies of all (i) contracts and subcontracts; (ii) all development agreements entered into with government and/or private entities; (iii) all easements; and (iv) all local approvals, permits, licenses, and certificates, together with copies of all conditions to any of the foregoing.
20. An environmental audit and report from an environmental inspection company acceptable to Lender certifying that the Property has been inspected to the extent and in the manner required by Lender, and that no environmental hazards, pollutants, hazardous material, oil, contaminants, including but not limited to radon gas, asbestos, polychloral biphenyls, any of which are in violation of applicable laws exist on, under on in connection with the Property, and certifying to such other matters as Lender may reasonably require, and such permits, certifications, indemnifications, and other instruments issued by entities or individuals that Lender may reasonably require certifying that the Property is in full compliance with all Federal, State, and Local statutes, regulations and ordinances relating to environmental matters.
21. Copies of all site plans showing the Project and each component thereof as described in a detailed Development Budget, and of any and all required site plan approvals. In addition, temporary and permanent licensing

and permits then required by the municipal and governmental authorities having control and approval of the final plans and specifications by all municipal and governmental agencies that so require shall be provided to Lender. After such approval, there shall be no material changes in said final plans and specifications without the prior written approval of such municipal authority (if necessary), Lender, the approval of Lender to be unreasonably withheld.

22. Prior to the final Loan disbursement, an "as-built" survey of completed shell Improvements, and receipt of evidence that (i) all completed work and Improvements requiring inspection by governmental authorities having jurisdiction have been inspected and approved by such authorities; (ii) such governmental authorities have accepted dedication of roads, sewers, and other facilities where necessary, and (iii) all required certificates with respect to the shell construction and other approvals have been duly issued.
23. A detailed critical path method schedule for construction, and a monthly draw schedule.
24. All financial statements required hereby; to include statements of borrower, guarantors, and tenants.
25. To the extent not attached as an Exhibit hereto, a complete and detailed construction and operations budget for the Property.
26. Market feasibility study.

Letter to Mr. Arthur DiMartino
September 13, 1989
Page 14

As a further condition to Lender's making the Loan, the following shall be required:

Execution by Borrower of Loan documents in form and substance satisfactory to Lender, including a loan agreement, real estate mortgage, promissory note, and security documents, evidencing the terms and conditions herein contained.

This letter represents an effort to delineate my understanding of the basic terms of the transaction as we have discussed it. It is not binding and will be superceded in its entirety by a definitive written agreement.

If this letter accurately delineates the basic business deal reached between the parties, please have the appropriate representative of CHTA acknowledge same in the appropriate space below, return one copy to me and retain one copy for your files. Upon receipt of the acknowledgement, I will meet with my counsel to draft a binding commitment letter.

Sincerely,

JHW Realty Advisors, Inc.

By Denison M. Hall
Denison M. Hall
Principal

Acknowledged and Agreed
Custom House Tower Associates

By John B. White
General Partner

Date September 19, 1989

FRANKELL CROW COMPANY
By Frank D. Crow
General Partner

DMH/emd
0913001

CENTRAL ARTERY

STATE STREET

STATE STREET BLOCK

CENTRAL STREET

CUSTOM HOUSE SQUARE

131 STATE STREET

INDIA STREET

NORTH

0 5 10 20 40 60

BOSTON, MASSACHUSETTS

CONSTRUCTION COSTS	SQUARE FT	COST/SQ FT	BUDGET	TOTAL
SHELL	84,920	\$95.38	\$8,100,000	
FOUNDATION	84,920	\$1.18	100,000	
GARAGE	0	0.00	0	
TENANT FINISH,				
SPACE PLANNING	84,920	\$4.75	3,800,000	
Brasserie	0	30.00	0	
LAND	84,920	\$116.58	9,900,000	
BIA PRE-DEV	84,920	\$17.66	1,500,000	
DEV OVERHEAD (INCL CM)	84,920	\$7.07	600,000	
BUILDERS RISK INS	84,920	\$1.18	100,000	
LEGAL & TITLE	84,920	\$2.77	320,000	
ADVERT, PROMO	84,920	\$1.18	100,000	
LEASING COMMISSIONS	84,920	\$4.71	400,000	
CONSTRUCTION MANAGEMENT	84,920	\$2.36	200,000	
CONTINGENCY	84,920	\$7.07	600,000	
ARCHITECTS & ENGR.	84,920	\$8.24	700,000	
CONSTRUCTION CONTINGENCY	84,920	\$8.08	686,000	
LINKAGE	84,920	0.30	25,476	
SUBTOTAL		\$319.49	\$27,131,476	

FINANCING, LEASE-UP COSTS	INTEREST RATE, INCL. FEES
PRE CONSTRUCTION PERIOD	0 MONTHS
THE CONSTRUCTION INTERST.	84,920 10.00 10
INTERIM INTEREST	84,920 14.57 1,237,344
B.B.A. INTEREST	84,920 0.00 0
FEES/POINTS & PLACED	84,920 5.59 474,801
ORGANIZATION FEE	84,920 3.53 300,000
TESTING & INSPECTION	84,920 0.15 12,738
PERMITS, LICENSES & FEES	84,920 2.57 218,244
	84,920 0.00 0

SOFT COSTS BEFORE O.D.L.	26.41	12,243,127
SUBTOTAL BEFORE O.D.L.	1345.91	129,374,603
OPERATING RENT LOSS	94,920	11.11
TOTAL CONSTRUCTION AND LEASE-UP COSTS	1350.05	129,725,962
INTERIM LOAN BALANCE		0.00

SQUARE FEET	COST/SQFT	TOTAL COST
SHELL	84,920 96.56	\$8,200,000
GARAGE	0 0.00	0
LAND	84,920 116.58	\$9,900,000
SOFT COSTS	84,920 88.02	7,474,603
OFFICE	84,920 44.75	\$3,800,000
OPERATING RENT LOSS, BBA	84,920 11.14	\$9351,359
TOTAL COSTS PER RENTABLE FOOT	\$350.05	\$29,725,962

ADDITIONAL SOURCES:

EQUITY INVESTOR	\$21,500,000
INVESTOR/TENANT	4,200,000
MESH	2,000,000
	\$27,700,000

14 MONTHS

CONSTRUCTION PERIOD

9.25%

RENT PER SQ. FT. ASSUMPTIONS:	
GARAGE	0
BUILDING	\$4.10
TOTAL SQ. FT.	84,920
RETURN ON COST ASSUMPTIONS:	
Coverage:	1.29
Occupancy:	1.05
Cost of Capital	9.50%
Req. Return	0.197

NEW I	BIM ON COST	PRO DATA	RENT PER SQ. FT. NEW
100.0%	0.107	8878,220	\$10.34
100.0%	0.107	0	0.00
100.0%	0.107	1,060,290	\$12.49
100.0%	0.107	800,530	\$9.43
100.0%	0.107	606,980	\$4.79
100.0%	0.107	37,631	\$0.44
		93,183,651	\$37.49

BUILDING VALUATION

ASSUMPTIONS: LEASE-UI

TOTAL SQUARE FOOTAGE
LEASE-UP PERIOD (MO) 1-24)
BASE RENT
OPERATING COST ESCALATOR (CMT. ANNUALLY
BLDG. RENT ESCALATOR COMPOUNDED ANNUALLY
GARAGE RENT ESCALATOR, COMPO. MONTHLY,
INCREASED YEARLY
AVERAGE LEASE TERM:

24,920
SEE BELOW
132.21
3.001
4.001
0.001
5
TAX RATE PER 1000 SQ. FT.; BUILDING
TAX BASIS OF BUILDING
TAX BASIS OF GARAGE
TAX RATE PER SQ. FT., GARAGE
TAX RATE PER SQ. FT., BUILDING
OPERATING COST PER SQ. FT., GARAGE
OPERATING COST PER SQ. FT., BUILDING
PER SQ. FT. RESERVE FOR TENANT BEFIT
AND COM. BEGIN YEAR 3.
DEPRECIATION
BUILDING
FEATURES
AMORTIZATION OF CONSTRUCTION INTEREST
FULL OCCUPANCY %
PARKING REVENUE PER SPACE, PER MONTH.
NUMBER OF PARKING SPACES.

ASSUMPTIONS: SALE

SALE YEAR
CAP RATE
LOAN TO VALUE

2000
7.251
85.001

ASSUMPTIONS: GROSS RENTAL

BASE RENTAL, NET AVG.
OPERATING COST PER SQ. FT., BUILDING
TAX RATE PER SQ. FT., BUILDING
TOTAL GROSS RENT

ASSUMPTIONS: FINANCING

PERCENT FINANCED
COST OF CAPITAL, Lease
BLDG COST PER SQ. FT.
DISCOUNT RATE

FINANCIAL RATIOS:

PERMANENT
11.0% TOTAL COST
CASH FLOW PER SQ. FT.
TOTAL COST
DEBT CAPACITY
EQUITY REQUIRED
LOAN TO VALUE

QUARTERLY ANALYSIS: Q.1 THRU Q.4

1991

1992

TIME ZERO

Q1

Q2

Q3

Q4

YEAR 1

Q5

Q6

Q7

Q8

OCCUPANCY %

A TOTAL SQ. FT. AVAILABLE

A RENT PER SQ. FT.

ADD: PARKING REVENUE

TOTAL REVENUE

LESS: OPERATING EXPENSES

LESS: OPERATING EXPENSES, GARAGE

LESS: REAL ESTATE TAX, BUILDING

LESS: REAL ESTATE TAX, GARAGE

NET OPERATING INCOME

LESS: INITIAL INVESTMENT

ADD: NET SALE PROCEEDS

CASH FLOWS BEFORE FINANCING

LESS: FINANCING

LESS: DEVELOPMENT SEE NOTE

NET CASH FLOWS

ADD: NET SALE PROCEEDS

LESS: FINANCING

LESS: DEVELOPMENT SEE NOTE

NET CASH FLOWS

ASSUMPTIONS: GROSS RENTAL

BASE RENTAL, NET AVG.
OPERATING COST PER SQ. FT., BUILDING
TAX RATE PER SQ. FT., BUILDING
TOTAL GROSS RENT

ASSUMPTIONS: FINANCING

PERCENT FINANCED
COST OF CAPITAL, Lease
BLDG COST PER SQ. FT.
DISCOUNT RATE

FINANCIAL RATIOS:

PERMANENT
11.0% TOTAL COST
CASH FLOW PER SQ. FT.
TOTAL COST
DEBT CAPACITY
EQUITY REQUIRED
LOAN TO VALUE

QUARTERLY ANALYSIS: Q.1 THRU Q.4

1991

1992

TIME ZERO

Q1

Q2

Q3

Q4

YEAR 1

Q5

Q6

Q7

Q8

OCCUPANCY %

A TOTAL SQ. FT. AVAILABLE

A RENT PER SQ. FT.

ADD: PARKING REVENUE

TOTAL REVENUE

LESS: OPERATING EXPENSES

LESS: OPERATING EXPENSES, GARAGE

LESS: REAL ESTATE TAX, BUILDING

LESS: REAL ESTATE TAX, GARAGE

NET OPERATING INCOME

LESS: INITIAL INVESTMENT

ADD: NET SALE PROCEEDS

CASH FLOWS BEFORE FINANCING

LESS: FINANCING

LESS: DEVELOPMENT SEE NOTE

NET CASH FLOWS

ADD: NET SALE PROCEEDS

LESS: FINANCING

LESS: DEVELOPMENT SEE NOTE

NET CASH FLOWS

[illegible]

CASH TO CITY	FRES. VALUE
SEAS FLOW	\$75,844
NET SALE PROCEEDS	61,091
CITY DISCOUNT RATE	5%
O.B.A. INTEREST	950,599
O.B.A. PRINCIPAL	100,000
O.B.A. EARNING CUST	1,415,094
PRESERVE VALUE TO CITY	\$3,585,899
TOTAL CASH TO CITY AFTER PAYING OFF USA	\$4,805,016

CASH TO PARTICIPATING MORTGAGEE	PRES. VALUE
PRECEDED RETURN @	\$8,502
INITIAL INVESTMENT	(162,188,324)
O.D.L. FUNDING	(311,676)
CASH FLOW AFTER LTD.PTMS	502
CASH FROM SALE, INCL. INV.	502
PRESENT VALUE TO MORTGAGEE	\$4,423,491
ADD TO MORTGAGEE	11,092
NET CASH TO MORTGAGEE	\$25,400,006

[illegible]

COVERAGE RATIOS						

FIRST MORTGAGE	0.88	1.28	1.35	1.26	1.59	1.59
TOTAL DEBT	0.83	1.30	1.27	1.19	1.50	1.50
						1.59
						1.50
						1.59

DEPRECIATION

LEASE TABLE

[illegible][illegible]

5083 MSCJ

[illegible]

LEASE COMMENCEMENT AGREEMENT SUMMARY

PROPERTY: Custom House
LESSOR: Boston Redevelopment Authority (BRA)
LESSEE: Custom House Tower Associates
LEASE
TERM: 85 years
RENEWAL: None

PROJECT: The rehabilitation and/or renovation of the Property. For purposes of this Agreement, unless inconsistent with the context, the terms "Project" and "Property" are used interchangeably.

FINAL

DESIGNATION: Not more than one year from the execution of the Lease Commencement Agreement, subject to extension by mutual agreement of Lessor and Lessee and the provisions of paragraph 2 of the Lease Commencement Agreement. Notwithstanding any other provision of the Lease Commencement Agreement, but subject to any extension and correction rights therein granted, if within 18 months of the date of the Lease Commencement Agreement no Lease for the Property shall have been entered into between Lessor and Lessee, the Lease Commencement Agreement shall cease and be of no further force and effect, and the Lessor shall retain payments, if any, made hereunder, including Base Rent during the License Period, as liquidated damages.

LEASE

COMMENCEMENT

DATE: Simultaneous with Final Designation.

INITIAL REPAYMENT OF BRA INVESTMENT: \$150,000, payable September 21, 1989.

RENT: Base Rent During License Period: Payment in full of BRA interest payments hereafter due to GSA, starting October 1, 1989, and quarterly thereafter. At the election of the BRA, such payments shall be made either to the BRA or directly to the GSA. These quarterly payments are \$272,500.

Base Rent During Lease Term: As set forth in Exhibit C to the Lease Commencement Agreement.

PAYMENT IN LIEU OF TAXES: As set forth in Exhibit C to the Lease Commencement Agreement.

OVERSEERS: The Lessee, BRA and the New England Sports Museum shall begin efforts intended to result in the creation of a "board of overseers" charged with oversight of the museum areas in the base of the Custom House. Such board shall be composed of representatives of Lessee, New England Sports Museum, the BRA, other governmental, preservation and cultural representatives.

ZONING: The Project is within an Urban Renewal Subdistrict and is governed by all zoning applicable by its terms to said subdistrict. This may include Development Impact Project ("DIP") payment requirements Under Articles 26A and 26B, Civic Design Commission Review under Article 28, Barrier Free Access Requirements under Article 30 and Development Review Requirements under Article 31 of the Boston Zoning Code. For purposes of said Articles 26A and 26B excess square footage subject to said DIP payments shall be only such footage as is not directly or indirectly devoted to public usage.

DESIGN
GUIDELINES
AND

REVIEW: A. Lessee must adhere to the Design Guidelines issued as part of the Request for Proposal, except that the provisions of the Lease Commencement Agreement shall govern in the event of any inconsistency.

B. Lessee shall at its election either purchase or prepare and submit a Historic Structures Report for review and approval.

C. Lessee must adhere to BRA Development Review Procedures (Exhibit E), and Lessee acknowledges said Development Review Procedures and Article 31 of the Boston Zoning Code will encompass BRA approval of both exterior and interior renovation.

ASSIGNMENT: Lessee and Lessor acknowledge the intention of Lessor to assign any and all interest in the Property to the City of Boston upon complete reimbursement by Lessee of Lessor's aforementioned expenditures and upon fully discharging all obligations in the acquisition, operation and disposition of the Property.

SUBORDINATION: Lessor's fee interest in the Property will not be subordinated.

FINANCING: Any initial permanent financing may not exceed 150% of certified total project costs. Certified total

project costs shall include direct and indirect costs, fees, charges, and expenses of every name and nature incurred by or on behalf of Lessee in connection with its undertakings hereunder and under the Lease Commencement Agreement.

ADDITIONAL REPAYMENT OF BRA INVESTMENT: \$1,350,000 payment at construction loan closing; \$2,000,000 residual receipts note, all as set out in Exhibit C to the Lease Commencement Agreement.

SALE AND REFINANCING PROCEEDS: Five percent (5%), as set out in Exhibit C to the Lease Commencement Agreement.

ALIENATION: Lessee may not dispose of all of its interest in the project for five years after issuance of a final certificate of occupancy. Thereafter, Lessee may not dispose of all of its interest in the project without the written consent of Lessor, such consent not to be unreasonably withheld.

ESTOPPEL

CERTIFICATE: Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

CONSTRUCTION OF

IMPROVEMENTS: Lessee must make improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 24 months of such Designation, subject to extensions for causes beyond Lessee's control.

CONSTRUCTION OF PUBLIC

IMPROVEMENTS: Lessee must make improvements to accomplish the construction of a new park in McKinley Square, with funding by the public or other third party or parties to be finalized before final designation. Completion of all such improvements must adhere to the time schedule specified in the preceding section "Construction of Improvements". The design and construction of the improvements will be subject to BRA design review and approval, but Lessee shall not be obligated to complete any such improvements beyond the level of funding available from the public or third parties. In the event such funding is not fully available, Lessee may, but shall have no obligation to, complete such improvements, in which event Lessee shall have the right, with the consent of the BRA (such consent not to be unreasonably withheld), to offset the costs of completing such improvements against any other payments due hereunder or under the Lease or the Lease Commencement Agreement.

BOOKS AND

RECORDS: Lessee must provide Lessor with a statement of certified total project costs computed in accordance with the Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval, such approval not to be unreasonably withheld.

AFFIRMATIVE

ACTION: Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

LIABILITY: Lessor and the City of Boston will not incur any expenses in the development of the Property, except as provided herein or in the Lease or Lease Commencement Agreement. The Property will be leased in an "as is" condition but the Lessee will be permitted to examine the Property to assure itself that it is structurally sound and that the Improvements may be undertaken in accordance with physical and financial plans and assumptions of the Lessee and the BRA.

This LEASE COMMENCEMENT AGREEMENT (this "Agreement") is made this day of September, 1989 by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and Custom House Tower Associates (the "Developer"), a Massachusetts limited partnership. The BRA and the Developer collectively shall be referred to herein as the parties.

WITNESSETH

Reference is made to the following facts:

A. Pursuant to a resolution adopted on June 9, 1988, the BRA tentatively designated Custom House Tower Associates as redeveloper of property known as the Custom House in the Waterfront Urban Renewal Area, Project No. Mass. R-77, in the City of Boston. Attached hereto as Exhibit A is a perimeter description of said property which, together with all improvements now existing thereon (the "Improvements"), is herein referred to as the "Site". Further, pursuant to a resolution adopted on the same date, the BRA voted to authorize the execution of this Agreement with the Developer. The Improvements and other development features upon and adjacent to the Site will be designed, developed and/or maintained pursuant to the requirements of this Agreement.

B. The tentative designation by the BRA is subject to the Developer's execution of a Lease Commencement Agreement embodying requirements and pre-conditions for final designation, which final designation shall be simultaneous with the commencement date (the "Lease Commencement Date") of a long-term ground lease (the "Lease") of the Site from the BRA to the Developer. This Agreement is the Lease Commencement Agreement to which the tentative designation refers. The interval between the date of execution of this Agreement and the commencement date of the Lease is defined as the license period (the "License Period").

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. All actions of the Developer and the BRA hereunder shall be subject to and in conformity with the following materials (the "Transaction Documents") which are incorporated herein and made a part hereof and as to which this Agreement shall be supplementary except where a specific conflict exists, in which case this Agreement shall prevail. The Developer and the BRA shall at all times proceed in accordance with the Transaction Documents and this Agreement.

The Transaction Documents supersede all other documents or correspondence with respect to this redevelopment prior to the date hereof and consist of: a Resolution of the BRA adopted on June 9, 1988, entitled "RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY RE: TENTATIVE DESIGNATION OF CUSTOM HOUSE TOWER ASSOCIATES, WATERFRONT URBAN RENEWAL AREA, MASSACHUSETTS PROJECT NO. R-77, BOSTON CUSTOM HOUSE (2 INDIA STREET, BOSTON, MA)" and the document entitled "Lease Commencement Agreement Summary," and the document entitled "REVISED FINANCIAL SUMMARY AND ANALYSIS CUSTOM HOUSE TOWER PREPARED FOR BOSTON REDEVELOPMENT AUTHORITY by Arthur DiMartino September 8, 1989" which are attached hereto and marked, respectively, as Exhibit H and Exhibit B and Exhibit C.

2. The Developer agrees that no later than the later of (i) one (1) year from the execution hereof or (ii) sixty (60) days following the date the BRA has approved or has been deemed to have approved the Contract Documents, as such term is defined in the Development Review Procedures attached hereto as Exhibit E, in either case subject to the extension by mutual agreement of the Developer and the BRA, or by automatic extension pursuant to the design review time table set forth in Paragraph 7 of this Agreement, to perform all its obligations under this Agreement and to satisfy all conditions precedent to execution of the Lease established in this Agreement and in the Transaction Documents. The BRA, upon determining that the Developer has so satisfied such conditions precedent, shall make a final designation of the Developer as redeveloper of the Site in accordance with its usual procedures. Simultaneously therewith, if the Developer shall not then be in material default of any of its obligations hereunder, the Developer and the BRA shall execute the Lease. Whether or not such final designation has been made or the Lease then executed, the Developer shall make rent payments in accordance with the schedule set forth in the Lease Commencement Agreement Summary. Notwithstanding any other provision of this Agreement, if, for reasons other than the failure by the BRA to proceed in good faith hereunder, within 18 months of the date hereof no Lease for the Site shall have been entered into between the BRA and the Developer, the BRA shall have the right to terminate this Agreement by giving 60 days' prior notice to Developer in which case this Agreement shall cease and be of no further force and effect (unless within said 60 day period Developer shall either cure or diligently begin to cure the failure which is the basis of the BRA's exercise of its said right to terminate). Should this Agreement be so terminated the BRA shall retain all payments and deposits made hereunder during the License Period as liquidated damages. Such rights of termination and retention shall be the sole recourse of the BRA in the event of Developer's failure to execute the Lease as required by the terms hereof. In no case shall the BRA

have any right against the Developer to seek specific performance or to seek special or consequential damages.

3. Forthwith after the execution of this Agreement, the parties shall enter into negotiation intended to result in the document which is to become the Lease.

Notwithstanding any inconsistent provisions of the Transaction Documents:

a. Developer shall include schematic plans for the public improvements as part of its schematic submission and shall work with the BRA in the designing of the public improvements described in the Lease Commencement Agreement Summary in accordance with the design requirements attached hereto. With the exception of such schematic plans, all costs for such public improvements shall be borne by the public or other sources and the Developer shall have no obligation to fund any of such costs. Developer shall work with the BRA in the oversight of construction of such public improvements to help insure their timely completion in accordance with requirements of the Lease. To the extent practicable in view of the joint design process the Developer shall submit plans for the public improvements in accordance with the Development Review Procedures set forth in Paragraph 7 hereof. The developer shall be responsible for the control and day-to-day ordinary maintenance (i.e., cleaning) of the public improvements, and shall have the right but not the obligation, to repair the public improvements.

b. The Lease shall contain financial terms and other terms and conditions which conform to the provisions of Exhibit C attached hereto, notwithstanding anything herein to the contrary.

4. It is the intention of the parties that prior to the Lease Commencement Date, and as a condition precedent to final designation by the BRA as referred to in Paragraph 2 hereof, the Developer shall prepare for the redevelopment of the Site in accordance with the procedures and the schedules set forth or contemplated in this Agreement, and in conformity with the Transaction Documents.

5. The sole obligations of the BRA hereunder shall be timely performance of its obligations hereunder, including, without limitation its duties with respect to approvals required hereunder, with respect to final designation and with respect to negotiation and execution of the Lease and the demise of title thereunder as required by Paragraph 6. Further, the BRA shall cooperate fully with the Developer in efforts to obtain other approvals from the City of Boston and other governmental authorities. The BRA does not guaranty

the issuance of any such approvals. Consistent therewith, except as otherwise provided in Paragraph 6, the Site is to be delivered on the Lease Commencement Date in its then condition "as is," it being agreed that, during the period of this Agreement, the Developer will have opportunity to examine the same in all respects (including subsurface conditions and utilities and including examination of all conditions of the Custom House); provided, however, that no demolition or removal of materials shall be permitted without prior written approval of the Authority of a plan to dismantle and, if necessary, to reconstruct the area under study, the same not unreasonably to be withheld. The BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligation to do any work on or with respect to the Site, or the condition thereof, except for those representations and warranties contained in Paragraph 6.

6. On the Lease Commencement Date, as hereinafter defined, the BRA shall possess, shall demise to the Developer pursuant to the Lease, and thereafter maintain good and clear record and marketable title to the Site, free from all liens and encumbrances and free of all tenants and occupants, subject only to the following permitted exceptions:

a. Terms and provisions of the Waterfront Urban Renewal Plan, as amended through June 9, 1988.

b. Terms and provisions of the Deed from the General Services Administration of the United States of America to the Boston Redevelopment recorded with Suffolk Registry of Deeds at Book , Page , on October 23, 1988, a copy of which is attached hereto as Exhibit D, and to the extent the same is incorporated in said Deed, the terms and provisions of the Response to Notice of Surplus Determination. The BRA shall on or prior to the Lease Commencement Date be obligated to obtain such estoppel certificates and/or clarifications with respect to said Deed and Response to Notice of Surplus Determination as may be required: a) by the Developer's financing sources in order to provide debt or equity financing acceptable to Developer, or b) by Developer's designated title insurance company in order to provide title insurance acceptable to Developer.

The Developer shall cause an examination of title to the Site to be made and shall give notice to the BRA no later than forty-five (45) days before the Lease Commencement Date specifying (i) the date and time through which such examination was made and (ii) any failure of the record title to the Site to comply with the requirements of this Paragraph 6. The Developer hereby waives its right to object to title defects of record as of the date and time of such examination and not so specified in Developer's notice. If Developer

shall fail to give notice of such title examination to the BRA, the Developer shall waive its right to object to any such title defects of record on the date which is forty-five (45) days before the Lease Commencement Date. The BRA hereby covenants with the Developer that the BRA shall take no action nor permit a failure to act which would result in or cause the creation of a lien or encumbrance upon the Site or otherwise cause title to or condition of the Site to fail to comply with the requirements of the Paragraph 6.

7. a. The Developer shall at its election either purchase or prepare and submit a Historic Structures Report (the "HSR") for review and approval as set forth in the letter agreement dated August 11, 1988, and attached as Exhibit F. The approved format for the Historic Structures Report is attached as Exhibit F-1.

b. The Development Review Procedures which are attached to this Agreement as Exhibit E set forth the formal stages of submissions and approvals of the Schematic Design, the Design Development, and the Contract Documents (collectively, the "Design Materials") for the Improvements to be designed, constructed and/or installed to the extent required by this Agreement by the Developer in the redevelopment of the Site. In the event that any provision of the Development Review Procedures shall be inconsistent with any other provision of this Agreement, then this Agreement shall prevail over such inconsistent provision; otherwise, the Development Review Procedures shall be treated as supplemental to this Agreement. Notwithstanding the foregoing, the parties may execute a separate Design Review Agreement which may modify the Development Review Procedures as agreed to herein. The terms of any such Design Review Agreement shall upon execution supercede and replace the requirements and time table set forth in or contemplated by this Paragraph 7.

c. The Project (including all work, installations, and elements proposed by NESM) is subject to Development Review Requirements under Article 31 of the Zoning Code, a copy of which Article is attached as Exhibit G. Processing under the Development Review Requirements shall recognize that considerable information concerning the Project has already been submitted in connection with the process through which the Developer has been tentatively designated by the BRA. The Project (including all work, installations, and elements proposed by NESM) is also subject to review by the Boston Landmarks Commission as required by City of Boston ordinance.

d. Within ninety (90) calendar days from the date of final approval of the HSR the Developer shall submit to the BRA the Schematic Design for the Improvements, as

described in the Development Review Procedures. The BRA shall review the Schematic Design and shall within thirty (30) calendar days after receipt thereof either forward the schematic design submission to the Civic Design Commission for its review under Article 28 of the Zoning Code, or notify the Developer in writing of disapproval, specifying the respects in which the Schematic Design is disapproved.

e. Within one hundred and twenty (120) calendar days after the BRA has approved the Schematic Design, the Developer shall submit to the BRA the Design Development for the Improvements (as described in the Development Review Procedures). The BRA shall review the Design Development for conformity with the approved Schematic Design and this Agreement and shall, within thirty (30) calendar days after the receipt thereof, either approve the Design Development or notify the Developer in writing of disapproval, specifying the respects in which the Design Development is disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) calendar days after the Developer receives the written notice of such disapproval, resubmit the Design Development altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within thirty (30) calendar days after submission of the Design Development or any correction thereof, as the case may be, such Design Development or corrected Design Development shall be deemed approved.

f. Within one hundred and eighty (180) calendar days after the BRA has approved, or has been deemed to have approved, the Design Development, the Developer shall submit to the BRA the Contract Documents (which include Final Working Drawings and Specifications for the Improvements as described in the Development Review Procedures). The BRA shall review the Contract Documents for conformity with the approved Design Development and shall, within thirty (30) calendar days of receipt thereof, either approve the Contract Documents or notify the Developer in writing of disapproval, specifying the respects in which the Contract Documents are disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) calendar days after the Developer receives the written notice of such disapproval, resubmit the Contract Documents altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be

subject to the review and approval of the BRA in accordance with the Development Review Procedures and the timetable hereinabove provided for an original submission, until the Contract Documents shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within thirty (30) calendar days after submission of the Contract Documents or any correction thereof, as the case may be, such Contract Documents or corrected Contract Documents shall be deemed approved.

g. With respect to approvals of the BRA under Paragraphs 7b through 7f above, once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of the previously approved submission or to new elements which were not present in previous submissions.

h. The BRA hereby acknowledges that the Developer will undertake the construction and/or rehabilitation of the Improvements in a manner which will qualify as the rehabilitation of a "certified historic structure" as defined in Section 48(g) of the Internal Revenue Code of 1954, as amended, which will require that the Secretary of the Interior of the United States approve the Schematic Design, Design Development and Contract Documents for the construction and/or rehabilitation of the Improvements. The Developer shall concurrently submit to the BRA a duplicate set of all documents and duplicates of all correspondence issued to and received from the U.S. Department of Interior including, but not limited to, Schematic Design, Design Development, or Contract Documents required by said Secretary of the Interior to the BRA. Any changes recommended by the U.S. Department of Interior shall be reviewed by the BRA. In the event the BRA shall request any changes to the design of the Project or require any other action which might make federal tax rehabilitation credits unavailable with respect to the work to be done to the Custom House, the Developer shall be entitled, but not required, to proceed with all work unrelated to such change, and the Developer and the BRA agree to use reasonable efforts in order to obtain the approval of the U.S. Department of the Interior to such changes or actions. If such approval has not been granted within ninety (90) calendar days after notice to such Department, the Developer shall not be required to make such proposed change or to take such action.

i. The BRA acknowledges that the construction of the Improvements as shown in the Schematic Design requires the issuance to the Developer of federal, state and municipal permits and approvals, some of which may depend upon examination of various elements of the Project, including without limitation, environmental impacts not fully assessed

on the date hereof.. If the Developer is unable to obtain all such necessary permits and approvals for construction of such Improvements, the Developer shall take reasonable steps to redesign or work with the BRA to redesign the Improvements to conform to any limitations or conditions imposed by such environmental review or in any such permit or approval, and the BRA shall recognize any such limitation or condition in its response to submissions of Design Materials by the Developer hereunder. In the event any such resubmission is required, the times for performance of the Developer's obligations pursuant to this Agreement shall be extended for the periods of time reasonably required for the preparation of such resubmission.

j. The BRA hereby waives the obligation of the Developer under the BRA's tentative designation to enter into a memorandum of understanding with the NESM. The BRA also hereby acknowledges that the Developer and NESM will be proceeding together in a coordinated manner to obtain necessary government approvals with respect to their proposed undertakings for the Site. Recognizing that such undertakings will in certain respects be intertwined the BRA agrees, notwithstanding anything herein to the contrary, that the Developer shall not be in default under this Agreement by reason of failure timely to perform hereunder if such failure is brought about directly or indirectly by actions or inactivity of NESM. Without limitation, the Developer shall receive an equitable extension of all time periods herein set forth if NESM is not timely in its submissions and performance, or if its submissions or performance requires resubmission for further approvals or actions by either the Developer or the BRA.

8. As part of its submission of Contract Documents, or prior to submission of completed Contract Documents but after approval or deemed approval of Design Development, the Developer may submit plans and specifications prepared by its Architect for purpose of commencing work with respect to certain elements of the Improvements which may include site work, interior demolition, foundation work and other similar items which the Developer proposes to commence on a "fast-track" basis. The BRA will promptly review said plans and specifications for "fast-track" construction and may approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the BRA to be consistent with those portions of the Design Materials previously approved and with elements of the Contract Documents, if any have then been submitted by the Developer, which are acceptable to the BRA. As a condition to proceeding with construction of any "fast-track" element, a copy of the construction contract for construction of such "fast-track" elements and a writing complying with the requirements of Paragraphs 11(a), (b) and (c) hereof, which

provides for construction on a "fast-track" basis, shall be submitted by the Developer in advance to the BRA for its approval. In connection with the approval of "fast-track" construction elements, and notwithstanding any inconsistent provisions of the Transaction Documents, the BRA may make a final designation of the Developer, the Lease may be signed and the date of such execution shall be the Lease Commencement Date; provided, however, that the approval of "fast-track" construction elements shall not waive the BRA's subsequent rights with respect to review and approval of all Design Materials. Further, the Developer shall not commence demolition activity without the prior written approval of the Authority, such approval not unreasonably to be withheld. Any construction prior to BRA approval of the Contract Documents shall be at the sole risk of the Developer with respect to costs of corrective or additional work (which may include demolition) to conform the work to the Design Materials approved by the BRA.

9. It is the general policy of the BRA that all buildings constructed or rehabilitated in urban renewal project areas shall be designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting the Developer's obligation to comply with all legal requirements applicable thereto, including Article 30 of the Zoning Code, the Design Materials (including the Contract Documents) shall include provisions conforming, insofar as practicable, with the rules and regulations promulgated by the Architectural Access Board of the Commonwealth of Massachusetts, which rules and regulations, as amended from time to time, are hereby incorporated herein by reference. The BRA shall take into consideration the provisions and objectives of such rules and regulations in its review of and action upon the Design Materials (including Contract Documents).

10. Within thirty (30) days before the Lease Commencement Date, the Developer shall submit to the BRA a copy (certified by the Developer to be true and correct) of one or more commitments, issued by a lender or lenders which is an Institution as herein defined, whereby such lender(s) agrees to furnish construction or equity financing or to purchase industrial revenue bonds issued to furnish such financing for the Improvements contained in the Design Materials (subject to such lender's approval of the Contract Documents), together with evidence, satisfactory to the BRA, of the availability of equity capital, which, when combined with the financing to be provided by such lender(s) is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site in accordance with the Transaction Documents and this Agreement. Such commitments shall be accompanied by such further materials as the BRA may reasonably request evidencing

satisfaction of, or the Developer's ability to satisfy, the conditions to lending therein set forth. "Institution" shall mean any one of the following:

a. A bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code), chartered under the laws of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than One Hundred Million Dollars (\$100,000,000.00).

b. An educational institution with a capital endowment of not less than One Hundred Million Dollars (\$100,000,000.00); or

c. A pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution, or by and for any trade union and, in each case, having a net worth, determined in accordance with recognized accounting practices, of not less than One Hundred Million Dollars (\$100,000,000.00).

11. Whether or not the Lease Commencement Date shall already have occurred, before beginning any rehabilitation or construction of the Improvements on the Site, the Developer shall first have submitted to the BRA the following:

a. A copy (certified by the Developer to be true and correct) of the contract, if any, between the Developer and one or more general contractors or construction managers (hereinafter called the "Contractor") engaged by the Developer for the rehabilitation of the Improvements shown and described in the Contract Documents, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to be performed by the Contractor and those engaged by it, including, but not limited to, the requirements of Paragraphs 15 and 16 below of this Agreement. Such contract and writing (or, in the case of "fast-track" construction of the Improvements, any construction contract related thereto, if it exists) shall be subject to the approval of the BRA which shall not be unreasonably withheld;

b. A copy of a building permit issued by the Boston Inspectional Services Department fully covering the work to be undertaken, together with evidence satisfactory to the BRA that all fees in connection therewith have been paid.

The Developer shall not conduct work pursuant to a building permit for the demolition or the construction of the Improvements without the prior certification of the BRA that the work to be done or completed as set forth in the permit application is in accordance with the Contract Documents approved by the BRA; provided, however, that plans and specifications for structural, electrical, mechanical or plumbing systems need not have been submitted to and approved by the BRA except to the extent that such systems impact the exterior elements, or historic interior elements of the base, of the Improvements; and

c. A copy of a performance and payment bond if required by the Institution or other assurance of completion of the Improvements, as required by the Contract Documents.

12. The Developer shall at all times keep the BRA fully and currently advised of the status of all aspects of the Developer's progress in meeting the terms and provisions of the Transaction Documents and this Agreement with respect to the redevelopment of the Site, including, without limiting the generality of the foregoing, development of the Design Materials, securing financing, and arrangements for construction. All contracts entered into by the Developer under this Agreement respecting the redevelopment of the Site shall obligate the parties thereto to act in a manner consistent with the obligations of the Developer under the Transaction Documents and this Agreement and the Lease. During the implementation of any such contracts, the BRA shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the Contract Documents and this Agreement. Such inspections and review shall be undertaken at reasonable times, following notice to the Developer.

13. This Agreement shall serve as a license for early entry (the "License") granted as of this date by the BRA to the Developer. Pursuant to this License, the BRA hereby authorizes the Developer, its agents, employees, contractors, subcontractors and invitees to enter upon the Site for the purposes of undertaking site work, inspections, measurements and all other purposes reasonably incident to the Project, including, without limitation, fund raising activities. Prior to any such entry, the Developer shall give at least twenty-four (24) hours prior oral notice to the BRA, and, unless the Developer has previously delivered evidence of insurance as set forth below, shall deliver evidence of insurance for each such entry in form and amount as are reasonably acceptable to the BRA (but in no event in excess of the amounts set forth below). The Developer's obligation to give prior notice of entry shall cease from and after the

time that the Developer shall regularly be entering the Site pursuant to this License.

The Developer's access granted hereby shall be exercised in common with the BRA and others to whom the BRA may elect to grant access, provided, that, such right of the BRA to have access or to grant access to others is subject to these conditions: a) the Developer shall be given at least twenty-four (24) hours prior written notice of the exercise of such right of access, b) such notice shall state who shall be entering the Property, in what areas, and for how long, c) no right of access (except by the BRA following default hereunder which is not cured within applicable grace periods or for emergencies) shall last more than six (6) consecutive hours, d) prior to any right of access being exercised the Developer shall be provided with written indemnities and hold harmless agreements (from such parties and on such terms as Developer may specify) and with current insurance policies or certificates in form and amount and covering such risks as shall be acceptable to Developer. The right of the BRA to have access to the Property (except following default hereunder which is not cured within applicable grace periods or for emergencies) and the right of the BRA to grant others access to the Property shall cease at such time as the Developer shall begin work in the Property or prepare to do the same by undertaking such activities as moving materials and equipment onto the Property. This License may only be revoked by the BRA if the Developer fails to perform its obligations hereunder after written notice from the BRA and the expiration of any applicable cure period. The Developer shall not permit, commit or suffer waste or impairment to the Improvements. At such time as the Developer is regularly entering the Site pursuant to this License, the Developer shall deliver to the BRA evidence of liability insurance for bodily injury with limits of not less than \$1,000,000 per person/\$2,000,000 per occurrence, and of liability insurance in an amount not less than \$1,000,000 for property damage naming the BRA as an additional insured party. In addition, the BRA shall name the Developer as an additional insured party on any liability insurance carried by the BRA with respect to the Building. The Developer agrees to indemnify and save harmless the BRA from all suits, actions, claims, damages, demands or losses, expenses and costs of every kind and description to which the BRA may be subjected or put by reason of injury to persons or property, which result from any act or omission of the Developer, its agents, employees, contractors, subcontractors or invitees acting pursuant to this License. Similarly, the BRA agrees to indemnify and save harmless the Developer from all suits, actions, claims, damages, demands or losses, expenses and costs of every kind and description to which the Developer may be subjected or put by reason of injury to persons or property, which result from any act or omission of the BRA,

its agents, employees, contractors, subcontractors, invitees or others acting pursuant to this Agreement or pursuant to any other rights, powers, or claims of right or power of or under the BRA. The BRA agrees to give notice of any such action, etc. The Developer shall be provided with all keys (and related entry instruments, such as combinations) to the Building. The Developer shall have the right (subject to the approval of the BRA, which approval shall not be unreasonably withheld) to erect a sign on the Site during the License Period. The Developer shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

In the event this Agreement shall be terminated for any reason other than the failure of the BRA to perform its obligations hereunder, then, at the election of the BRA, the Developer will turn over and, to the extent the Developer has the authority to do so, cause others to turn over to the BRA all reports, test data, plans and other material developed in connection with its efforts hereunder relative to redevelopment of the Site or any part thereof. The Developer agrees to use good faith efforts to secure the agreement of its providers of services so that the BRA (or others to whom the BRA may at any time transfer all or any part of such material) shall thereafter be free, without obtaining the consent of the Developer or the provider of any such services and without liability or cost, to use material turned over it or required to be turned over to it; provided, however, that prior to any such transfer, the BRA shall release and indemnify the Developer and all such providers of services from and against any and all liabilities, claims, damages or demands, of every name and nature arising out of the use of such materials by the BRA or any such others.

14. The Developer agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the site prior to the Lease Commencement Date shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any preconstruction testing or exploration if the Lease is not executed.

15. The Developer for itself and all successors and assigns, agrees that in the redevelopment of the Site and in all construction activity undertaken therein:

a. The Developer will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. The Developer will

take affirmative action to ensure that qualified applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or compensation, and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;

c. The Developer will send to each labor union or representative of workers with which the Developer has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the Developer's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended* and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

d. The Developer will comply with all provisions of Executive Order #11246 of September 24, 1965, as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor;

e. The Developer will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to the Developer's books, records, and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders;

f. In the event of the Developer's wilfull noncompliance with the nondiscrimination clauses of this Paragraph 15, or with any of said rules, regulations, or orders, upon written notice to the Developer, and the continuance of such noncompliance for sixty (60) days thereafter, this Agreement may be terminated or suspended in whole or in part by the BRA. In addition, the Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended* or by rules,

regulations or orders of the Secretary of Labor, or as otherwise provided by law; and

g. The Developer will include the provisions of subparagraphs a through f of this Paragraph 15 in every contract and purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,*so that such provisions will be binding upon each such contractor, subcontractor, and vendor as the case may be. The Developer will take such reasonable action with respect to any construction contract, subcontract, or purchase order as the BRA directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Developer becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the BRA, the Developer may request the United States to enter into such litigation to protect the interest of the United States.

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11375 of October 13, 1967.

16. The Developer, for itself and its successors and assigns, further agrees, that in all construction activity undertaken with respect to the Site, it will pursue the efforts hereinafter described to ensure that its Contractor, and those engaged by said Contractor for construction of the Project on a craft-by-craft basis, meet the following standards:

a. at least 50% by bona fide City of Boston residents:

b. at least 25% by minorities; and

c. at least 10% by women.

Such efforts consist of the following:

1. The Developer shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the Contractor to pursue the efforts enumerated in this Paragraph 16 and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;

ii. Each of the BRA, the Developer, the Contractor, and each subcontractor shall designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;

iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the BRA, the Developer, the Contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Project and the manning requirements for construction activity over the life of the construction period;

iv. Each request for qualified construction workers made by any person involved in the construction of the Project to a union hiring hall or business agent shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Project be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's work force composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such requests, the affirmative action officer of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the BRA;

v. All persons applying directly to the Contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the BRA and a written record of such referral shall be made, a copy of which shall be sent to such officer; and

vi. The Developer, the Contractor, and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the requirements of this Paragraph 16 for at least one year after the Completion Date and will make the same available for inspection by the BRA upon reasonable notice.

In addition to the foregoing, the Developer, and its successors and assigns, shall comply, as determined by the BRA, with the Executive Order of the Mayor of the City of Boston, dated December 17, 1987, relative to contracting with Minority and Women Owned Business Enterprises in all construction activity undertaken with respect to the Site, said Executive Order requiring that a minimum of fifteen percent (15%) in the procurement of all goods and services shall be supplied by certified Minority Business Enterprises (MBE's), and a minimum of five percent (5%) in the procurement of all goods and services shall be supplied by certified Women Business Enterprises (WBE's).

17. The parties acknowledge and agree that any Institution approved by the BRA and involved in the development or permanent financing of the Site with the Developer as leasehold mortgagee, may require modifications to the Lease for the purpose of implementing the mortgagee protection provisions thereof or otherwise facilitating the financeability of such Leases. The BRA agrees not to withhold unreasonably its agreement to enter into such requested modifications provided that, in the sole opinion of the BRA, the same shall in no way affect the term or rent (base, and, if any, percentage or additional) or otherwise in any material respect adversely affect any of the rights or interests of the BRA under the Lease. Without limitation, before giving any such agreement, the BRA may require changes to any proposed modification.

18. The Developer hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys' fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as the result of any activities undertaken by or for the Developer in its implementation of this Agreement or its activities with respect to the Site, but such indemnification shall not extend to liability asserted as a result of any activity undertaken by or for the BRA in implementing its obligations hereunder.

19. If the Developer shall neglect or fail to perform or observe any obligation herein contained to be performed or observed on the part of the Developer and the BRA shall serve upon the Developer notice of such neglect or failure and if the same shall not thereafter be cured within sixty (60) days of notice thereof, or, if the same shall not be capable of being cured within such sixty (60) day period the Developer shall fail to commence such cure within sixty (60) day period and diligently prosecute the same to completion, or if the Lease shall not, for whatever reason, other than failure of the BRA to act in good faith with respect to its obligations

under this Agreement and the negotiation and execution thereof, be executed by thirty (30) months from the date of execution hereof subject to extension by the BRA upon a showing of good cause by the Developer, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of the Developer and terminate all other rights, interests and claims of the Developer to and in the Site. Except with respect to those obligations which survive termination as provided in the following sentence, termination of this Agreement, together with retention of all payments theretofor made pursuant to the Transaction Documents and this Agreement shall be the sole remedy in lieu of all of the rights and remedies the BRA may otherwise have against the Developer on account of any failure or default on the part of the Developer hereunder. Notwithstanding such termination, the Developer shall remain liable for all obligations theretofor accrued by it under Paragraphs 13, 14 and 18 hereof and the same shall survive the termination of the Agreement, but otherwise none of the Developer's obligations hereunder shall survive termination.

20. a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

b. The waiver of the BRA or the Developer of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

c. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

d. If any term or provision of this Agreement, or the application thereof to any persons or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

e. No member of the Congress of the United States of America shall be admitted to any share or part hereof, or

to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she, directly or indirectly holds an "interest" as that term is defined in M.G.L. Chapter 268A.

f. No member, official or employee of the BRA shall be personally liable to the Developer in the event of any default or breach by the BRA or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

g. Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or the Developer. Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal service, service may be made by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA, the address of the BRA is:

Director's Office
Boston Redevelopment Authority
One City Hall Square
9th Floor
City Hall
Boston, Massachusetts 02201

with copies to:

Chief General Counsel
Boston Redevelopment Authority
Building 33
Charlestown Navy Yard
Charlestown, Massachusetts 02129

and if addressed to the Developer, the address of the Developer is:

Custom House Tower Associates
c/o James B. White
20 Custom House Street
Boston, Massachusetts 02110

with copies to:

Mr. Arthur DiMartino
Tramell Crow Company
One Main Street, Suite 700
Cambridge, Massachusetts 02142

Either the BRA or the Developer may change its respective address by giving written notice to the other in accordance with the provisions of this Paragraph.

Any request for approvals made by the Developer to the BRA where such approvals shall be deemed granted after a period of non-reply by the BRA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type in each instance setting forth the applicable length of such period of non-reply:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN ____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

h. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

i. No present or future partner, beneficiary or other entity now or hereafter owning any interest in Custom House Tower Associates, or in any entity associated, controlled by, or controlling said Custom House Tower Associates, shall ever be personally liable for the performance of any obligation hereunder or for any default hereunder. In any such instance the recourse of the BRA or any successor or other entity shall be limited as herein expressly set forth. Without limiting the generality of the foregoing, this Agreement shall be binding upon Custom House Tower Associates, its successors and assigns.

WITNESS the execution hereof on the date first above
written.

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel

By: Stephen Coyle, Director

CUSTOM HOUSE TOWER ASSOCIATES

By: _____

By: _____

List of Exhibits

- A - Perimeter description of Property
- B - Lease Commencement Agreement Summary
- C - Revised Financial Summary dated September 19, 1989
- D - GSA Deed
- E - BRA Development Review Procedures
- F - August 11, 1988 Letter regarding HSR Process
- F-1 Approved HSR Format
- G - BZC Article 31
- H - BRA Tentative Designation

DISCLOSURE STATEMENT CONCERNING BENEFICIAL INTEREST
REQUIRED BY SECTION 40J OF CHAPTER 7 OF THE GENERAL LAWS

- (1) Location: U.S. Custom House, Boston
- (2) Grantor or Lessor: City of Boston
- (3) Grantee or Lessee: Custom House Tower Associates, or successor
- (4) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the above listed property are listed below in compliance with the provisions of Section 40J of Chapter 7 of the General Laws (see attached Statute).

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

See attached list.

- (5) The undersigned also acknowledges and states that none of the above listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Department of Capitol Planning and Operations, to the best of his knowledge.

SIGNED under the penalties of perjury.

Signed: *J. R. White*

Date: 9/19/88


<u>NAME</u>	<u>PERCENTAGE OWNERSHIP</u>
Trammell Crow Company	28%
Trans National Group Services	50%
Lawrence S. DiCara	1%
Neil P. Arkuss	
Robert Duggan)
Donald F. Winter)
Jerry V. Klima)
James W. Perkins)
Margaret H. Perkins)
Robert Sullivan)
Gordon L. Doerfer	7%
Malcolm Hindin)
Stanley Keller)
David O. Mahoney)
Casimir de Rham, Jr.)
James M. Whalen)
John T. Williams)
James B. White	14%

This list is tentative and is subject to change, based upon final arrangements. After such arrangements are made, an updated certificate will be delivered to the BRA.

Society
for the Preservation
of New England
Antiquities

Harrison Gray Otis House
141 Cambridge Street
Boston, Massachusetts 02114
617 227-3956

September 20, 1989



Mr. Paul Reavis
Boston Redevelopment Authority
Room 943
Boston City Hall
Boston, Massachusetts 02201

Dear Paul:

Thank you for inviting me to attend the presentations on August 30, 1989 by Hamlen Collier and Trammell Crow relative to the proposed development of the Custom House Tower.

Since you have asked me to submit a concise, written, assessment of the two development teams, I offer the following:

1. Qualifications of the development teams - although Hamlen Collier spent the majority of the time allotted to them presenting the qualifications of their team, the qualifications of the Trammell Crow team impressed me as being substantially stronger, based on their excellent written proposal and their discussion of the building fabric and the proposed treatment.
2. Sensitivity to historic preservation issues - Trammell Crow, with Beyer, Blinder Belle on their team and the willingness to purchase the existing historic structures report, has made preservation a much higher priority than Hamlen Collier with Les Larsen as their sole historic consultant.
3. Implementation of a sensitive museum adaptation - this was difficult to judge, because there was limited information on this subject and because I do not believe a Sports Museum is a compatible use of the space in the Custom House. However, I thought Trammell Crow demonstrated the better understanding of the building.
4. Design Quality - Trammell Crow demonstrated their understanding of the design issues in both their written proposal and their presentation; Hamlen Collier did neither. In fact, Hamlen Collier's landscape architect said she would propose minimal treatment to the McKinley Square because the Custom House is the Hub of an important historic area, and she was contradicted by Sargent Collier who said he

Mr. Paul Reavis
September 20, 1989
page 2

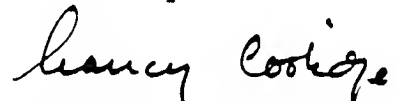
thought the area needed a reflecting pool, a skating rink or something similar to attract attention similar to Rockefeller Center in New York City.

5. Understanding and commitment to fulfill preservation procedures - Trammell Crow by hiring Beyer, Blinder Belle, and in the approach which they outlined in their written proposal, demonstrated a strong understanding and commitment to fulfilling preservation procedures. Although Hamlen Collier talked about their commitment to preservation procedures, they did not give visible evidence of this commitment either in the selection of their team or in writing.
6. Budget and commitment to preserving the fabric of the building - through the steps already taken to understand the building and to specify what they would do in a written proposal, Trammell Crow demonstrated a far greater commitment to preserving the fabric of the building. I do not have enough information, nor do I feel qualified to evaluate the respective budgets.

Overall, I was disappointed in the Hamlen Collier presentation and the lack of a written proposal, because I would have liked a Boston team to be designated as the developer of the Custom House. But there was no question that Trammell Crow demonstrated a much greater understanding of the building, the complexity of the issues and a commitment to do a first class adaptation.

I am happy to have you share my comments with the Director, but I ask that my letter, which is candid and blunt, be treated as confidential.

Sincerely,



Nancy R. Coolidge
Director

NRC:smc

BOSTON PRESERVATION ALLIANCE

TO: Paul Reavis, BRA
FROM: Toni Pollak, BPA
DATE: Sept. 6, 1989

amp

RE: Custom House Designation

As I mentioned, the Boston Preservation Alliance looks forward to the restoration and completion of the Custom House project with the designated developer and the assistance of the BRA, the Landmarks Commission, the Massachusetts Historical Commission and other interested groups.

The Alliance's role in this development will be to work with the developer you select, regardless of who that may ultimately be. However, in your deliberations there are a number of specific issues that the Alliance feels would benefit the preservation and conservation of this important Boston building:

1. The building should be owned by the City of Boston to insure reviews and controls over the structure for the future.
2. The developer should convey the area to be used as a museum in a restored state. Moldings, doorways, windows and other decorative features should be retained and where necessary conservation technology applied. The museum installation should not in anyway interfere with these ornamental or architectural features in a permanent manner.
3. The clock and its mechanisms should be preserved.
4. Public access to the observation deck should be required during regular business hours.
5. Careful consideration should be given to the open space surrounding the building. Historic street configurations should be maintained. Street parking should be removed.
6. Current preservation technology should be used to stabilize the structure as soon as possible.

Please contact me if you have any questions, 367-2458.

ROBERT G. NEILEY, ARCHITECTS

FAX (617) 426-2634

286 CONGRESS STREET, BOSTON, MASSACHUSETTS 02210

(617) 426-9720

August 31, 1989

MEMORANDUM:

TO: Paul Reavis, Assistant Director, Boston Redevelopment Authority

FROM: Robert G. Neiley, A.I.A.- Committee Historic Resources

RE: Proposals for re-use of the Boston Custom House as presented at a meeting at the BRA on Wednesday, August 30, 1989 by the following:

Hamlen, Collier and First Winthrop Corp. (HCW)
Trammell Crow Company, Custom House Tower Associates (TC)

Since the focus of the meeting was to evaluate the impact of the two development proposals on the proper preservation, conservation and appropriate alteration to the Custom House as a listed historic structure, the two proposals are compared on subjects relative to this focus.

Qualifications of Developer Team

While HCW team members were well-qualified individually, they scarcely appeared to be a team, since their individual statements were sometimes contradictory and/or tentative.

The TC team of well-respected professionals all showed that they knew each other well and had a unified approach to the project.

Sensitivity to Historic Preservation Issues

While both developers intended to use the Investment Tax Credits with their attendant demands and regulations, TC was clearly aware of these standards in realistic detail, while HCW tended to gloss over them as being of minor importance.

Control of Sports Museum Design Impact

HCW indicated a strong intention (via Henry Wood rather than Hamlen & Collier) to integrate and even monitor the design and building implications of the Sports Museum's concepts as far as installation and active programs were concerned.

ROBERT G. NEILEY ARCHITECTS

Memorandum to Paul Reavis

8/31/89

Page 2.

TC tended to see the Sports Museum as going its own way quite independently (possibly to the detriment of the preservation of the building).

Design Quality

HCW presented no project designs for consideration and one could only extrapolate from known works of team members.

TC presented carefully considered design concepts which in several cases skillfully combined space and function considerations with the physical and historical limitations of the building.

Project Understanding as Expressed in Preliminary Budgets

HCW presented a Development Project Construction Budget which seemed to have been hastily and loosely put together. Six different parts of the program, for example, were listed at \$100,000. The figure of \$200,000 listed for architectural and engineering services for a project of this complexity was not credible, and the budget as a whole was not convincing.

TC, on the other hand, showed construction costs not in round numbers but in figures that appeared to be based on actual material take-offs and estimates. Mr. Durlacher had answers to detailed questions from the committee, and one was left with the impression that TC had a firm and realistic grip on the cost of executing the project.

Conclusion

Other criteria for choosing one developer over the other may be proposed and explored, but on the basis of those listed above it is my opinion that Trammell Crow-- Custom House Tower Associates should continue to be the BRA designee for this project.

MEMORANDUM

TO: Mr. Stephen Coyle, Director, Boston Redevelopment Authority
FROM: David Fixler, Society of Architectural Historians
RE: Proposals for the Development of the Custom House Tower.

8 September, 1989

On Wednesday, 30 August, 1989, presentations were made by Hamlen, Collier and by Trammell, Crow to members of the Boston preservation community, myself included, of their respective proposals for renovations to and resoration of the Custom House Tower. An assessment of the quality of their presentations, and the perceived ability of each team to execute the work in a manner considered to be in the best interest of the conservation of the Custom House fabric follows.

I. Qualifications of the Development Team

Hamlen, Collier stressed three major issues in promoting their scheme: the strength of an "all Boston team," the wealth and enthusiasm of First Winthrop, their financial backer, and their commitment to "let preservation lead the design effort." Although they have undertaken numerous renovations in the Boston area that have been executed in a manner recalling one historic period or another, they have not been carried out as strict preservation/restoration efforts. This writer believes that their choice of Kallmann, McKinnell and Wood as architects for the project indicates a commitment on their part to quality design, though not necessarily to the best possible preservation effort. An indication of this can be seen in the fact that their preservation consultant was only retained at the time of the announcement of this meeting.

First Winthrop's presence as a committed financial partner gives added weight to their proposal, but one questions that their plan to purchase the building outright from the city is in the best long term interests of the property as it relates to the people of Boston. This is not merely a preservation question, for covenants can be written into the property title which would protect the fabric, but has also to do with how the property may eventually be utilized if the Sports museum should ever decide to leave the building.

The presentation of their approach to the project itself was somewhat sketchy and we were not given the impression that a lot of thought has been given, to this time, as to how the project would be physically executed.

Trammell, Crow appears to have chosen their design team with the intention of producing the best possible preservation effort. They have thought through the major problems involved in implementing and executing the proposed design, and have, in their choice of Beyer, Blinder, Belle as preservation architects implied a genuine concern to restore the Custom House to the fullest extent possible.

The Developers assured us that a financial backer is now in place for the project, though we were not made privy to their identity. It is our understanding that this backer, and Trammell, Crow, will accept the long lease terms that have been proposed by the City, and that they do not plan to purchase the building outright.

This writer is not familiar with Trammell Crow's record to date in preservation projects, but they have structured their team and tailored their presentation in a way that would seem to indicate that they are serious in their intent to carry out a first class preservation effort. They also have, in the person of Stanley Durlacher, an individual who knows both the Custom House and construction very well, and appears to have made a realistic assessment of how to best accomplish this work.

II. Design Quality / Commitment to Preservation Issues

As noted above, Hamlen Collier's choice of Kallmann, McKinnell and Wood as project architects proves a strong interest in achieving maximum design impact in the development of this property. This is consistent, for example, with Hamlen Collier's choice of Schwartz-Silver as architects for the renovation of their property on Union Street, which is a commendable project as a modern intervention in an historicizing mode, but was never (one assumes) intended as a preservation effort (at least on the interior lobby). Henry Wood of KMW inferred that the finished Custom House product would bear distinctive design marks that would earmark the spirit and quality of our own time as well as that of 1915, and 1840. There is much to be commended in this, and this writer has no doubt as to KMW's ability to execute this work in a highly competent and innovative manner. It should be noted however, that this approach may not be consistent with the requirements of the most strictly preservation oriented design effort, and must be considered in this light. KMW did not present any drawings of their proposed scheme, though a parti was described. If our understanding is correct, the Hamlen Collier scheme would utilize the ground floor of the rotunda space as part of the museum, which would mean that the elevator lobby would have to be walled off from the rotunda, at least at this level. This does not appear to be an optimal design, and is potentially a troubling aspect of the project.

The presentation by Ms. Child, the landscape architect, included a rendering and a discussion of Neo-Classical forms and materials, but the text did not harmonize with the drawings, and there was little evidence that there was a strong idea present that would begin to control and develop the very real urban design issues that exist on this site.

It was noted during the question and answer period that a Rockefeller Center style sunken plaza, with ice rink, may be proposed for the east side of the building facing the McKinley block. While this may be a lively and interesting idea, the reality of most sunken plazas is that they are dreary and isolated most of the time unless they are placed in a well defined, densely populated active space (such as that found at the heart of Rockefeller Center). It is the opinion of this writer that the space in question cannot meet these criteria given its present configuration and the existing street pattern, and that this is therefore not an appropriate use to consider for this site.

Trammell Crow's proposal comes with a schematic design that has been thought through by the architects, Beyer, Blinder, Belle and Dean; Tucker, Shaw; and by Mr. Durlacher, to a degree sufficient to inform our committee, in a graphic manner, of their intent. By utilizing the ground floor of the rotunda as the entrance to the office tower, and dedicating a separate elevator to the museum, they have obviated the problem of walling the elevators off from the rotunda. In doing so, the Sports Museum will lose some space on the ground floor, which should be cause for further scrutiny of this scheme as to the workability of the museum, although the Sports Museum personnel apparently feel that they can be accommodated in either scheme.

The glimpses of "design" which could be read in the margins of this presentation were ordinary at best, if not trite; and in any case are certainly not up to what one may expect Kallmann, McKinnell and Wood to produce in terms of design rigor and quality. Design, however, is clearly not the focus of Beyer, Blinder, Belle's proposal; here preservation and, where possible, restoration will lead the way because this is what they do best, and it is the reason that they have been hired by the developers for this project.

Issues such as roofing and the proposed mechanical systems were well presented and no doubt accomplished the developer's aim, which was to prove, in the proposal, that the team had done its technical homework.

Stephen Tucker's presentation of the urban design issues included a plan and a strategy to bring the site back into its rightful place as a public space in this area through a fairly subtle manipulation of form and material, though it would involve cutting off all regular, through traffic from the site. Given the actual traffic loads that pass through these streets, even at the busiest times, this may in fact not be terribly disruptive to the traffic patterns in this area, though this should of course require further evidence as to its practicality. It is certainly a preferable option from an aesthetic and a pedestrian standpoint.

III. Budget Analysis and Commitment to Preserving the Building Fabric

It is difficult, in analyzing the cost estimates from each developer, to draw comparisons for many of the critical line items in the budgets. Hamlen, Collier is carrying a lower overall number for their hard costs, and their professional fee costs, when figured as a percentage of the cost of construction, is on a level with what is usually found only in the most reductive, speculative office development. This writer does not believe that a quality architectural office can document, execute and supervise a project of this magnitude and delicacy within the constraints of this fee, unless there is something unorthodox about the architect-developer arrangement in this case, which we are not being told. Within their lower overall hard costs, Hamlen, Collier is generally carrying higher numbers for their systems costs, which would tend to reinforce the notion that the creation of first class office space is a premium cost consideration of this project.

Trammell, Crow was also quite specific in outlining the necessity of creating state of the art office space in order to make this a financially viable project. They appear however, to have given the systems more serious consideration, both from a cost and an aesthetic standpoint, which are (one hopes) reflected as more precise numbers in the estimate. There is very little specificity in the budget as to how the exterior of the building is to be conserved, though (as noted above) Mr. Durlacher presented a very convincing scenario as to how the original building's roof will be repaired. In the end one must conclude that, without further discussion of the budgets and analysis of the worksheets that were used to arrive at the budget figures, the evaluation of these numbers, as part of the presentations of both developers, becomes somewhat more subjective, and therefore less useful than a cost estimate should be in weighing the merits of one project over the other.

IV. Conclusion

The rehabilitation of the Custom House Tower is an important and delicate project, in that it deals with the revival of one of Boston's major landmark structures. It is the kind of project which must be undertaken with sensitivity not only to the past of the structure and its surroundings, but also with an idea to successfully reintegrating it into the current life of the modern city. Given the often conflicting nature of the issues noted above, a balance should therefore be struck which allows the latter to occur within a framework of conditions established by the former.

It seems clear that, from a preservation standpoint, the Trammell, Crow scheme will best conserve and enhance the existing, historic fabric of the Custom House Tower. Whether their solution will retain any lasting design quality of its own is another, though perhaps in this case not so important, matter. The Hamlen Collier scheme is unfortunately less developed than Trammell Crow's, though it is potentially more interesting, and more likely to be present in future guidebooks as a design of its own right, though it should be noted that this assessment is based only on a little of what was said during the presentation, and the past professional performance of the principal players in the development. The safe choice here is Trammell, Crow, and, given the checkered history of this structure to date, and given its location within the fabric of the city, the safer solution is in this case also probably the best solution.

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